

REFORMING VA'S FLAWED FIDUCIARY SYSTEM

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BEFORE THE
SUBCOMMITTEE ON OVERSIGHT AND
INVESTIGATIONS
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CONTENTS

February 9, 2012

	Page
Reforming VA's Flawed Fiduciary System	1
OPENING STATEMENTS	
Chairman Bill Johnson	1
Prepared Statement of Chairman Johnson	43
Hon. Joe Donnelly, Ranking Democratic Member	2
Prepared Statement of J. Donnelly	44
Hon. Jon Runyan	4
Prepared Statement of J. Runyan	44
Hon. Jerry McNerney, Prepared Statement only	45
WITNESSES	
Dave McLenachen, Director of Pension and Fiduciary Service, U.S. Department of Veterans Affairs	5
Prepared Statement of Mr. McLenachen	46
Accompanied by:	
Diana Rubens, Deputy Under Secretary for Field Operations, U.S. Department of Veterans Affairs	
Doug Rosinski, Attorney, Law Office of Douglas J. Rosinski, Esq.	23
Prepared Statement of D. Rosinski, Esq.	48
Executive Statement of D. Rosinski, Esq.	52
Katrina Eagle, Attorney, Law office of Katrina J. Eagle, Esq.	24
Prepared Statement of K. Eagle, Esq.	52
Executive Statement of K. Eagle, Esq.	54
Pam Estes, Veteran Fiduciary	25
Prepared Statement of P. Estes	55
Rick Weidman, Executive Director for Policy & Government Affairs, Vietnam Veterans of America	28
Prepared Statement of R. Weidman	56
STATEMENTS FOR THE RECORD	
Lori Perkio, Assistant Director, Veterans Affairs and Rehabilitation Commission, The American Legion	58
Wounded Warrior Project	60
QUESTIONS FOR THE RECORD	
Question & Response From: Hon. Bill Johnson, Chairman. Subcommittee on Oversight and Investigations - To: U.S. Department of Veterans Affairs ...	62
Additional Question & Response From: Hon. Bill Johnson, Chairman. Subcommittee on Oversight and Investigations - To: U.S. Department of Veterans Affairs	87
Letter & Questions From: Hon. Joe Donnelly, Subcommittee on Oversight and Investigations - To: Mr. David R. McLenachen, Director, Pension and Fiduciary Service, Veterans Benefits Administration, Department of Veterans Affairs	88
Response From: Mr. David R. McLenachen, Director, Pension and Fiduciary Service, Veterans Benefits Administration, Department of Veterans Affairs - To: Hon. Joe Donnelly, Subcommittee on Oversight and Investigations	90

REFORMING VA'S FLAWED FIDUCIARY SYSTEM

THURSDAY, FEBRUARY 9, 2012

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON VETERANS' AFFAIRS,
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS,
Washington, D.C.

The Subcommittee met, pursuant to notice, at 10:03 a.m., in Room 334, Cannon House Office Building, Hon. Bill Johnson, [Chairman of the Subcommittee] presiding.

Present: Representatives Johnson, Roe, Flores, Donnelly, McNerney, Barrow, Runyan.

OPENING STATEMENT OF CHAIRMAN BILL JOHNSON

Mr. JOHNSON. The hearing will come to order. I want to thank everyone for coming to today's hearing on the VA's Fiduciary Program. I will say from the outset, we already know that we're going to be interrupted. I apologize for that. We've been told that here within the next five to fifteen minutes votes will be called. At that point, we'll take a brief recess and go take care of that matter, and then reconvene.

I would like to ask unanimous consent of the Subcommittee and of the Subcommittee that Chairman Runyan of the Disability Assistance and Memorial Affairs' Subcommittee be allowed to join us today in our meeting.

Hearing no objection, so ordered.

The Subcommittee's Ranking Member, Congressman McNerney—is also Member of this Subcommittee, and we welcome him in both capacities today.

We're here today to have a frank and honest discussion about the problems festering in the VA's fiduciary program. The VA's approximately 95,000 appointed fiduciaries manage over \$3 billion in payments made to more than 100,000 of our Nation's veterans and their dependents.

In the last several years, the VA has created and implemented its fiduciary hub program. This program aims to streamline the system, and improve processing in fiduciary accountings, but I fear that these recent changes have only addressed a fraction of the problem.

This Subcommittee's investigation in the VA's Fiduciary Program revealed that fiduciaries who are doing the right thing are all too often finding it difficult to navigate the maze that makes up the fiduciary program. While numerous honorable fiduciaries serve our veterans, many bad actors exist in the system.

We found an instance where the VA arbitrarily removed a veteran's wife from her duties as his fiduciary, after what the VA characterized as ten years of excellent service. She was replaced by a paid fiduciary. VA policy is that they prefer family members and friends to serve as fiduciaries. It is obvious to me that this policy is just lip service and that needs to change.

Our investigation also uncovered that the fiduciary program has been plagued by failures in oversight and unwillingness to listen to the veteran. Last week in a hearing before the Full Committee, VA Deputy Secretary Scott Gould stated that the wrong way became the way we've always done it.

This mindset seems to have permeated the VA's fiduciary program. This past December, a VA fiduciary and a VA field examiner were convicted in Tennessee for embezzling almost \$900,000 from ten veterans' accounts which they oversaw. These felons used some of the stolen funds to pay their own cable and utility bills. Holding its fiduciaries accountable through proper oversight is just one way the VA can take modest steps to improve the system.

One of the VA's core values is responsible stewardship of the human and financial resources entrusted to it. The VA needs to work more efficiently and effectively to properly serve those veterans who have fiduciaries. I have seen evidence of veterans, their friends, and family repeatedly notifying the VA of fiduciary misfeasance. And time after time their appeals have been ignored. This needs to stop.

Identifying and correcting situations like these is certainly not rocket science. The VA has testified in the past that they are working through the backlog of fiduciary claims. To successfully manage the fiduciary program, the VA must focus not only on those waiting to be assigned a fiduciary, but also on those veterans in the program already.

In our first panel, Mr. Dave McLenachen, Director of the VA's Pension and Fiduciary Service and Ms. Diana Rubens, Associate Deputy Under Secretary for Field Operations at the VA will share their thoughts on the state of the fiduciary program.

As we will hear from our second panel, the VA is aware of the problems facing those in the fiduciary system. As much as the VA focuses on the positive steps they are taking in the fiduciary program, we are all aware of the other problems they refuse to address. This hearing provides a positive step forward in addressing and resolving these issues.

I appreciate everyone's attendance at this hearing, and I now yield to Ranking Member Donnelly for his opening statement.

[THE PREPARED STATEMENT OF BILL JOHNSON APPEARS IN THE APPENDIX]

OPENING STATEMENT OF HON. JOE DONNELLY, RANKING DEMOCRATIC MEMBER

MR. DONNELLY. Thank you, Mr. Chairman, and thank you for holding this important hearing. This hearing provides us with an opportunity to learn of the many changes the VA has taken to improve this program, since the Subcommittee on Disability and Me-

morial Assistance held a hearing last Congress on the VA Fiduciary Program.

The VA assures us that it is taking solid steps to fix the problems and weaknesses in the fiduciary program. Other witnesses will suggest that many problems remain. I want to be assured that the VA is improving the program, and has a solid road map to follow as we move forward.

The VA Fiduciary Program in place since 1926 is one of the most sensitive programs run by the VA, and one most in need of effective management and oversight. Not only must the needs of beneficiaries come first, but their assets must be protected from fraud and waste.

The VA currently oversees approximately 95,000 fiduciaries managing the financial affairs of more than 121,000 beneficiaries. In fiscal year 2011, the VA reports that the Veterans Benefits Administration made payments for compensation and pension benefits of approximately 53.5 billion, while fiduciaries managed approximately 171 million in VA benefits.

Since the 2010 hearing, VBA acknowledging that central office oversight of its fiduciary program like priority, announced in November 2011 that they would consolidate fiduciary operations from 56 regional offices into six hubs in six regional offices. The VA informs us the process will convert to a paperless processing environment. These changes should hopefully increase the program's efficiency and accountability.

The VA also informs us that it is making progress in coming to grips with the many problems it faces with its fiduciary beneficiary system. One of the major flaws exposed in 2010.

I am interested to see where we are in this process, and hope to get a detailed timeline, as to when the VA expects to bring forward a new electronic case management system. I hope the VA and our witnesses can provide insight into the current staffing levels of the VA Fiduciary Program, and whether we might need additional personnel.

I also would like to explore the effectiveness of current training efforts in ways this could be improved. I'm interested to hear that VA believes it has fully addressed the recommendations made by the VA, OIG and GAO. I hope we'll have an in-depth discussion of where we have been and where we need to go.

The fiduciary program faces many challenges and many problems in improving oversight. We must ensure that while we provide beneficiaries and their families with a meaningful say in the fiduciary process, we must make sure that the needs and interests of our veterans come first. I am pleased the VA is taking steps to improve the fiduciary program, but this Subcommittee wants to make sure these steps represent real progress in fixing these real problems.

Mr. Chairman, thank you for bringing this hearing, and I yield back.

[THE PREPARED STATEMENT OF JOE DONNELLY APPEARS IN THE APPENDIX]

MR. JOHNSON. I thank the gentleman for yielding back. I've just been notified that votes have been called. So I think at this point,

so we can keep continuity to the hearing and stay on focus, we're going to go ahead and recess at this point, and we will come back. I suspect it'll take probably 15 to 20 minutes or so, if I've got my information correct.

So the meeting—the hearing will be adjourned for now. We'll reconvene in about 15, 20 minutes.

[Recess]

MR. JOHNSON. This hearing will come to order. I thank those in attendance for indulging us as we took care of our duties to vote. I now recognize Chairman Runyan of the Disability Assistance and Memorial Affairs Subcommittee for an opening statement.

OPENING STATEMENT OF HON. JON RUNYAN

MR. RUNYAN. Thank you, Chairman Johnson, and thank you for the opportunity to participate in the hearing today. As Chairman of the Subcommittee on Disability Assistance and Memorial Affairs, I'm greatly concerned about the current state of the VA's Fiduciary Program. I look forward to working with this Subcommittee on oversight investigation in an effort to serve our Nation's disabled veterans.

Improving the VA's Fiduciary Program is essential because it serves a very vulnerable segment of the veterans' population, who are no longer able to take care of themselves. There are approximately 95,000 fiduciaries in the VA system, overseeing accounts of approximately 120,000 veterans. The total value of these accounts is in excess of \$3.3 billion.

While this overall amount is clearly significant, every individual dollar counts to the veteran who has earned disability investment through his or her service in sacrifice to our country.

Mismanagement and little oversight have no place in the administration of these benefits, especially dealing with those that are least able to manage their own affairs. We are here today to hold our VA accountable for its inability to properly serve the veterans who are in most need of the VA's assistance. When the VA fails to provide this assistance, many veterans experience extreme financial hardship.

Currently there is evidence that some in the VA system with responsibility for helping our veterans are embezzling funds, being nonresponsive to veterans' needs, and being over compensated for their duties performed. And this is simply unacceptable.

The issue in the VA Fiduciary system are further complicated by a backlog of initial appointments. Although the VA has stated that this backlog is due to the rigorous vetting process, there also has been evidence that the VA's noncompliance with its own regulations in ensuring that it appoints responsible trustworthy individuals to assess veterans in this way.

The majority of VA regulations concerning these appointments date from 1975 and I would highly encourage the VA to update these regulations immediately. It is my hope that as a result of today's hearing, the process of fixing VA's flawed fiduciary system can begin. I want to commend the Chairman, Chairman Johnson for holding today's hearing. And again, as Chairman of the Disability and Assistance—Disability Assistance and Memorial Affairs

fairs Committee, I look forward to working with you in truly serving our American heroes, and thank you, and I yield back.

[THE PREPARED STATEMENT OF JON RUNYAN APPEARS IN THE APPENDIX]

Mr. JOHNSON. I thank the gentleman for yielding back. We'll now, without any objection, we'll make Ranking Member McNerney's statement a part of the record.

[THE PREPARED STATEMENT OF JERRY MCNERNEY APPEARS IN THE APPENDIX]

Mr. JOHNSON. I now invite the first panel to the witness table. On this panel, we will hear from Dave McLenachen, the VA's Director of the Pension and Fiduciary Service. He is accompanied by Ms. Diana Rubens, the VA's Deputy Under Secretary for Field Operations.

Mr. McLenachen, your complete written statement will be made a part of the hearing record, and you are now recognized for five minutes.

STATEMENT OF DAVE MCLENACHEN, DIRECTOR OF PENSION AND FIDUCIARY SERVICE, U.S. DEPARTMENT OF VETERANS AFFAIRS, ACCOMPANIED BY DIANA RUBENS, DEPUTY UNDER SECRETARY FOR FIELD OPERATIONS, U.S. DEPARTMENT OF VETERANS AFFAIRS.

OPENING STATEMENT OF DAVE MCLENACHEN

Mr. MCLENACHEN. Mr. Chairman, Members of the Subcommittee, thank you for the opportunity to review the Department of Veterans Affairs Fiduciary Program. I'm accompanied by Ms. Diana Rubens, Deputy Under Secretary for Field Operations.

First, I am pleased to report the VA has strengthened its central office oversight of the program, dramatically improved the timeliness of its fiduciary appointments, aligned its staffing with the needs of beneficiaries, and significantly reduced misuse of benefits.

The Fiduciary Program appoints and oversees fiduciaries for veterans and other beneficiaries because of injury, disease, or the infirmities of age are unable to manage their financial affairs.

The VA currently oversees approximately 95,000 fiduciaries, who provide services to more than 121,000 beneficiaries. In April 2011, VA established a new office to more directly control this program. The new pension and fiduciary service focuses on the unique needs of these beneficiaries, of whom more than 50 percent are in VA's needs-based pension program.

The separate service also allows us to strengthen oversight of VA appointed fiduciaries, with dedicated staff responsible for policy, procedures, quality and training. Prior to the establishment of the pension and fiduciary service, VA worked to implement program improvements. These efforts included revising the site visit protocol for field activities, providing on-site training, deploying special assistance teams, strengthening policies and procedures, and enhancing service, delivery and protections.

In addition, VA has been responsive to GAO and Inspector General audits of the program. The findings from these audits confirm the VA has improved the fiduciary program. Recommendations

from GAO included conducting additional reviews of appointed fiduciaries and evaluating VA's fiduciary hub pilot project.

Recommendations from OIG included additional financial reporting requirements for fiduciaries, development of the fiduciary personnel staffing model, and development of Web sites for fiduciaries. All recommended action items were completed and closed.

To improve operational efficiencies, VA consolidated 14 of its fiduciary activities at the western area fiduciary hub in Salt Lake City, Utah. Under this hub concept, fiduciary managers deployed their field examination resources, according to the location of beneficiaries within the hub, and without regard to state borders or regional office jurisdiction, while centralizing all other fiduciary functions at the hub.

The consolidation improved timeliness of initial fiduciary appointments by 36 percent, and improved quality by 13 percent. It reduced the number of miles traveled per field examination by 6 percent, and the average days to complete initial fiduciary appointments by 26 days.

We are planning the deployment of the fiduciary hub concept in five other regions nationwide. In preparation for this deployment, we conducted an in-depth staffing analysis of our fiduciary activities, mapping the physical location of our beneficiaries, and field examiners, to develop a model for the national consolidation plan.

The VA will hire 58 additional field examiners and employ them nationwide based upon this model. The VA continues to develop procedures to enhance its efforts, to prevent and identify the misuse of beneficiary funds. We now require fiduciaries to submit detailed financial records with annual accountings. This allows us to verify reported expenditures during the accounting process, and better identify potential misuse of funds.

Additionally, under procedures implemented in 2010, our central office staff reviews each misuse determination to ensure accuracy and timeliness of follow-up actions. As a result of these new requirements, the rate of misuse decreased to less than one-tenth of one percent in 2011.

VA continues to conduct outreach regarding the fiduciary program. We participate in forums hosted by various agencies, such as the National Guardianship Association, the National Association of Elder Law Attorneys, the National College of Probate Judges, and the American Association of Retired Persons.

Outreach efforts include providing education on VA's program, participate in conference discussions, and recruiting qualified fiduciaries. We also organized and led a multi-agency round table with other government agencies to discuss and identify government-wide fiduciary best practices. We established collaborative relationships and developed methods to better serve common beneficiaries.

In 2011, the VA further improved its fiduciary training programs for employees and external stakeholders. We conducted centralized training for 115 new legal instrument examiners who review accountings, and maintain follow-up communications with beneficiaries. We also conducted ongoing monthly conference calls with field personnel to ensure consistent dissemination of policy information.

Finally, we deployed our first ever Web site for fiduciaries and beneficiaries, which provides tools, references, related links, and information on fiduciary responsibilities.

Despite VA's successful implementation of these improvements, challenges do remain. VA continues to work to improve its electronic case management system, the fiduciary beneficiary system, as it poses significant limitations.

Thus far, VA has developed a business requirements document for the new system, established a work group to investigate how it should integrate with other VA systems.

MR. JOHNSON. Sorry, Mr. McLenachen, your time has expired. So the remainder of your testimony will be entered into the record.

MR. MCLENACHEN. Thank you, Mr. Chairman.

[THE PREPARED STATEMENT OF DAVE MCLENACHEN APPEARS IN THE APPENDIX]

MR. JOHNSON. Let's go into questioning. What are the criteria for choosing a fiduciary?

MR. MCLENACHEN. Mr. Chairman, the criteria for selecting a fiduciary is controlled by law. Congress required us when looking to see who should be a fiduciary to check a number of things; criminal history, credit, and with general willingness to act as a fiduciary for a beneficiary.

VA's policy, Mr. Chairman, is to always try to select the least restrictive and most effective method of payment for a beneficiary. To do that, the first thing that we do is we look at who does the beneficiary want us to appoint. That's our first step.

If we can qualify that person, we will appoint that person. If that person cannot be qualified, we'll look to the person who has the care and custody of the beneficiary. That may be a family member that lives with the beneficiary and provides care, it may be a guardian, that's who we'll look to next.

The next step is any other family member or person interested in performing these functions for a beneficiary. Only as a last resort, Mr. Chairman, will we look to a paid fiduciary or a court-appointed fiduciary. That is because we're looking for the least restrictive method. And I can assure you, Mr. Chairman, that that is our policy and that's how we carried it out.

Just so there's no misunderstanding, currently only about eight percent of the roughly 120,000 beneficiaries pay a commission for fiduciary services.

MR. JOHNSON. Okay. The CFR states that a commission is only given to a beneficiary when it is necessary to obtain his or her services. Further it states that commission should only be used if the veteran's best interests would be served by the appointment of a qualified professional, or a qualified person. What does qualified mean to the VA?

MR. MCLENACHEN. To us, Mr. Chairman, qualified as I've described means that it's a person that has the interest of the beneficiary in mind, is willing to perform the service, and meets the qualifications that have been prescribed by Congress for us to implement. That is what the regulations are referring to.

So if it's an individual who has a criminal history or that has bad credit history, or for some other reason cannot be bonded, that individual will not be appointed as a fiduciary, but that just—

Mr. JOHNSON. Are there any educational or other qualifications required for—to be classified as a qualified person?

Mr. MCLENACHEN. Not at this time, sir. However, one of the first things that I did when I took this job of approximately five months ago, was to initiate a complete review of our current regulations, which Congressman Runyan mentioned during his statement. I think there's a real need to update those regulations. We've reviewed all of those regulations and are currently revising them. That is one issue that I would like to address in our regulations is whether there should be such requirements for fiduciaries.

Mr. JOHNSON. Would it surprise you to know that we have sworn testimony that a VA fiduciary stated that she had approximately one semester of community college education, while she is the appointed fiduciary for 43 veterans, as a single mother, working full-time? Is that—would that be the VA's acceptable criteria for a qualified person?

Mr. MCLENACHEN. Sir, I can tell you that with our current regulations, there is nothing to prohibit that fiduciary from serving in that role.

Mr. JOHNSON. In your opinion, would that be a qualified fiduciary? If you're a veteran, a disabled veteran, would you want—is that who you would want to put in charge of your daily care?

Mr. MCLENACHEN. It may be, sir, if that's the wishes of the veteran to have that particular fiduciary—

Mr. JOHNSON. No. This wasn't the wishes of the veteran. I'm talking about the VA appointing someone who's a qualified person, so the veteran has gone to the VA saying, I need a fiduciary.

So you go to the VA, and you request a fiduciary, would that be your idea of a qualified person?

Mr. MCLENACHEN. Sir, I would like to strengthen the requirements to be a fiduciary. So, in that instance, I think that there should be some more stringent requirements.

Mr. JOHNSON. Okay. How many fiduciaries have the background checks or certifications waived?

Mr. MCLENACHEN. Sir, we just recently issued new guidance that affirms our responsibility to check the background.

Mr. JOHNSON. Does the VA waive fiduciary background checks and certifications?

Mr. MCLENACHEN. It's not my knowledge that we do. The guidance out there now is to check background in every fiduciary appointment.

Mr. JOHNSON. I hope you're going to stay around for all the testimony today then.

Mr. MCLENACHEN. Yes, sir.

Mr. JOHNSON. What's the maximum percentage of a veteran's benefit a fiduciary is allowed to keep as a fee for their services?

Mr. MCLENACHEN. I'm glad you asked that question, Mr. Chairman, because I think there's a lot of confusion about the payment of commissions. The maximum amount by law is four percent. That's of the annual benefits paid to a beneficiary. And again that's the maximum. We always try to pay—to find a fiduciary who will

take less than four percent, but that's four percent of the annual benefits that's paid to a beneficiary. And again, only eight percent of the more than 120,000 beneficiaries pay such a commission.

Mr. JOHNSON. Okay. Would it surprise you to know that we have examples of VA fiduciaries taking five percent of all the veteran's income, as well as others taking five percent of VA disability compensation? And what do you do when you find situations where a fiduciary is taking more? First of all, what kind of auditing process do you have to ensure that you know, that your department knows what fiduciaries are taking, and what do you do when you find someone who's taking more than they should?

Mr. MCLENACHEN. Well, sir, the—we do have very stringent requirements that—for detecting that type of abuse. Approximately 30,000 or more than 30,000 accountings are done every year, to include fiduciaries who receive a commission. They're required to submit an annual accounting report, and in addition to that, submit detailed financial records to show all the transactions going in and out of the beneficiary's account. To include the commissions.

I'd be very surprised to learn that a fiduciary was in a VA appointment case taking more than four percent. What may be happening is the information you have pertains to a court-appointed fiduciary. In that situation, we recognize often a court-appointed fiduciary and the state courts often authorize more than the four percent that is authorized by Federal law. For that reason, court-appointed fiduciaries are a very last option as far as selecting a fiduciary for a beneficiary.

Mr. JOHNSON. Okay. I'm going to yield now to our Ranking Member for his questions. We'll go to Mr. Barrow, since the Ranking Member is not here.

Mr. BARROW. I'd like to pass at this time, Mr. Chairman. I'll ask the question later if I may.

Mr. JOHNSON. Absolutely. The gentleman yields back. I'll go to Dr. Roe.

Mr. ROE. Thank you, Mr. Chairman. Obviously there are situations where veterans are taken advantage of. We certainly understand that, and—but we shouldn't be by the fiduciaries.

In Tennessee, there was an example of \$900,000 being siphoned off from ten veterans' accounts, and what sort of oversight is there of the fiduciary by VA to prevent this incredibly egregious occurrence?

Mr. MCLENACHEN. Congressman, thank you for asking that question because I would like to be able to promise you that there would be no misuse of any benefits at all, and that we could completely eradicate that problem. Unfortunately, that is always going to be a very difficult task. Nonetheless, we have a very, I believe, good story about the oversight that we're currently doing to prevent misuse of funds.

In addition to the accountings that I mentioned, which are done on an annual basis, Congress has also authorized us to do on-site reviews of fiduciaries that handle 20 or more beneficiaries. In those cases, we actually go to the fiduciary's site where they conduct their business, and investigate the work that they've been doing for the beneficiaries that they manage.

In addition to that, sir, every single beneficiary in this program receives a follow-up field examination. Now, it depends on the circumstances of the beneficiary's case, it may be an annual follow-up field examination, or it may be periodically such as every four years in a case where there's a small amount of benefits paid.

But between those three—with those three measures that we take, annual accountings, on-site reviews, and follow-up field examinations, which every single beneficiary gets, we believe we're doing a pretty good job now of detecting misuse of benefits.

Mr. ROE. Does a VA fiduciary have the right to act independently of the VA? Or do they act independently of VA?

Mr. MCLENACHEN. Sir, are you asking about the fiduciaries?

Mr. ROE. I'm asking if a fiduciary does something, they have to go back to the VA, does the VA look at that?

Mr. MCLENACHEN. Sir, actually, this is something that I have a little bit of concern about, and I really want to address in the regulations that we're working on. I think one area that we can really improve this program is more clearly defining the responsibilities of the fiduciary and the rights of beneficiaries.

I'm admitting to you today that that's an area that we need to address. VA is not the fiduciary. We appoint a fiduciary to act for the beneficiary.

Mr. ROE. Independently?

Mr. MCLENACHEN. Independently within the guidelines provided by the law, VA regulations and guidance issued by the VA.

Mr. ROE. But they're not acting independently?

Mr. MCLENACHEN. No, sir. We still do VA oversight.

Mr. ROE. That would not be my definition of independent.

Mr. MCLENACHEN. There is no—

Mr. ROE. With all these disclaimers.

Mr. MCLENACHEN. There's no fiduciary that acts independent of VA oversight, sir.

Mr. ROE. Okay. What legal basis for VA—what is the legal basis for VA to ignore valid power of attorney appointing a specific individual of the veteran's choice as attorney-in-fact, fiduciary, or guardian of a veteran's finances?

Mr. MCLENACHEN. Let me clarify, sir, that we do not ignore individuals that have power of attorney. In fact, if that's the person that the beneficiary wants to have appointed, that's the first person that we would look to to appoint.

Mr. ROE. But isn't that a—haven't you just laid out a catch 22, because if this person isn't competent to do their own finances, then you would assume they wouldn't be competent to appoint who they want as fiduciary, that's why the VA does it. That's kind of a catch 22, isn't it?

Mr. MCLENACHEN. No, sir. These individuals are unable to manage their financial affairs. They're not unable or—

Mr. ROE. Who determines that?

Mr. MCLENACHEN. Excuse me?

Mr. ROE. By the way? Who determines they're incompetent? I know the voters determine we're all incompetent, but who determines that the veteran is incompetent—

Mr. JOHNSON. Will the gentleman yield?

Mr. ROE. I'll yield.

Mr. JOHNSON. Are you speaking for everybody?

Mr. ROE. I'm speaking for everybody.

Mr. JOHNSON. Okay. I wanted to make sure you were including all of us.

Mr. ROE. I'm including everybody. But who makes that determination?

Mr. MCLENACHEN. Sir, actually I'm going to refer you to Ms. Rubens. It's actually her individuals out in the field that have jurisdiction over making those decisions before they're forwarded to the fiduciary activity.

Ms. RUBENS. Thanks, Dave. Hopefully I can answer this fully. Actually, the rating specialist at the regional office, when they're reviewing the medical records, whether it's an exam or some other indication from medical providers, determine that there perhaps is a reason to believe that the veteran may be incompetent. At that point, if in fact, there's some uncertainty or some conflicting opinions, we will request an opinion to investigate the competence, based on the opinion of the medical provider as to whether or not they're competent to manage their own funds for VA purposes.

Once that's done, we'll provide that veteran due process, a notice that that proposal to determine that he or she is incompetent, allowing the veteran to come back in, provide contradictory or clarifying evidence. And at that point, we will make a determination based on that medical evidence that the veteran may be incompetent to handle his or her funds, and begin the process of identifying a fiduciary.

Mr. ROE. Okay. I'll yield back. I'll have some other questions later.

Mr. JOHNSON. We will—we'll have multiple rounds of questions, I'm sure. I'll go to Mr. Flores now.

Mr. FLORES. Thank you, Mr. Chairman, Director McLenachen and Deputy Rubens, thank you for joining us today.

It appears that you've done some internal studies on your fiduciary processes, and you've also reviewed, you know, thousands of cases of fiduciary work. Under Title 38 CFR 1369 it stipulates that the number of beneficiaries for whom an individual fiduciary may act, will be limited to the number of fiduciary that any—excuse me, the number the fiduciary may reasonably be expected to properly serve.

What do your studies tell you based on those—that in your reviews is a reasonable number of persons that a fiduciary can act for?

Mr. MCLENACHEN. Let me first say that, just to give you an idea of the scope of work that fiduciaries currently have. You've heard that there's 95,000 fiduciaries that we provide oversight of. 90,000 of those fiduciaries serve one beneficiary. So that's a one-on-one relationship.

Of the remaining 5,000, 4,000 of them serve five or fewer beneficiaries. That leaves us 1,000 fiduciaries who actually serve six or more veterans who need fiduciary services. Of those, roughly half are corporate fiduciaries, and the other half are individuals.

Now, keep in mind, that for these 1,000 fiduciaries, we're not talking about a single individual who tries to provide services to a hundred or 200 beneficiaries on their own. Rather, these are people

that are actually in the business of doing—of providing fiduciary services. So they have full staffs.

It may be an accountant that has a full staff of individuals to work on the project. And again, these are the individuals that we go out and we do on-site reviews of, and we get annual accountings regarding their practices.

The number of individuals that a particular fiduciary can handle, is controlled by what we see as far as the capabilities of the fiduciary and their performance. If they're performing below the level that we think is appropriate, we will remove them as fiduciaries for certain beneficiaries, and get them down to the level that we think they can do an adequate job.

Mr. FLORES. Okay. Well, I was a little concerned because I'd heard the comments by Chairman Johnson about 43 beneficiaries under one fiduciary, and 20 from Dr. Roe, and so you're saying we've got a small number of issues. Let me rephrase this, are you telling me we've got a small number of incidents where we have fiduciaries that have too many beneficiaries, or are you going to limit it to a handful or?

Mr. MCLENACHEN. Sir, we've got a small number of fiduciaries that handle multiple beneficiaries, a very small number.

Mr. FLORES. I got that part.

Mr. MCLENACHEN. As far as how many a particular fiduciary can handle, again there's no set number in our regulations. There's the criteria that you noted in the regulations which we interpret to mean, they've got to perform adequately to handle the number that they have, and have the capability to do it. And if they don't, we'll remove them as a fiduciary.

Mr. FLORES. Okay. Thank you. I yield back.

Mr. JOHNSON. I thank the gentleman for yielding back. I'll go to Mr. Runyan.

Mr. RUNYAN. Thank you, Mr. Chairman, and thank both of you for being here and your testimony, but my—I think my first question is probably going to go to Ms. Rubens.

In the American Legions' written testimony, they've—it cites that the Western Hub Fiduciary Program delayed for a follow-up has went from 120 days to 151 days on average. Are—is this accurate and are you addressing that issue?

Ms. RUBENS. Thank you. I would tell you that I don't have the exact number for how long it's taking. I can tell you that as I look at the trend of how quickly we're doing those follow-up or fiduciary beneficiary exams, that that has continued to improve through the end of last fiscal year and into November.

We have looked at and are working with Mr. McLenachen, as we identify where do we need to put some additional field examiners out, and we're in the process now of taking our number of field examiners from 350 and adding another 58. Not to a specific geographic location where we're located, but in fact, we have also worked to identify where are our beneficiaries are located, so that we can ensure our ease of access to reach them. We are working diligently to improve each and every outreach and field exam that we do, whether it's an initial appointment or a follow-up exam.

Mr. RUNYAN. I mean, because obviously creating the hub was supposed to increase efficiency, and with their testimony, it's going the wrong direction. And it's unacceptable personally.

Ms. RUBENS. And I would tell you that as we are looking at the numbers, is that the FEs are at a standard of 120 days, and right now, we're at 116. If we've got some issues in the west, obviously we'll take a look at that and make sure that we're addressing it.

I think as we add those 58 field examiners, the goal is, based on where the need is greatest and where we are seeing those beneficiaries residing, to ensure that we're going to have good access to them.

Mr. RUNYAN. Now, kind of addressing—actually what I said in my opening statement, a lot of the—the majority of the regulations concerning fiduciaries haven't been updated since 1975. You've talked a lot about how these—and how you need to do it, and how you're promising to do it. I mean, we need to get this done, because you also say, we have training that we have to do. Well, what standards are we training to? I mean, it's really hard to hold people accountable for things that we have outdated procedures and rules to deal with. Can you tell me where you're at in the process, how close you are to being—having a solid thing to update your manual?

Mr. MCLENACHEN. Yes, sir. When I said that we were working on the regulations, I did not imply—mean to imply that we're not currently working on them, or we're going to do it in the future. We are actually drafting regulations right now.

So we took a—we brought people together, our staff for a week, to essentially disassemble the current regulations. I couldn't agree with you more that our regulations are out of date and need to be updated immediately. I came from the Office of General Counsel, where I reviewed regulations for the department, I know how to do this, and that's what we're working to get done.

As far as timing, I can tell you that the rule-making process is not easy. It's slow, just because of the law that's required, that we're required to follow when we're doing regulations. So these regulations will be complete within the next year to a year and a half, and that's only because of the lengthy process that's required by law.

Now, I will say that I've discussed our regulations with Secretary Shinseki, and he assured me that these were among the highest priorities in the department, and he was going to back us on getting them done as quick as possible. And I intend to take him up on that.

Mr. RUNYAN. How long going into that, I know the GAO report of 2010 said you needed to revise them. How long—did we not address that issue before we got to where you're at now?

Mr. MCLENACHEN. Well, sir, I can't really comment on what happened before I got to this position. I can tell you that when I first got to this position, I did an assessment on my own, to see what I thought we needed to do, what the highest priority was, and if you talk to any Member of my staff, I'm sure they would tell you that that was the very thing that I identified.

Why it took so long to get to this point, I cannot answer that question for you. I can just assure you that we're working on it.

Mr. RUNYAN. I'll wait for the next round of questions and I yield back.

Mr. JOHNSON. Thank the gentleman for yielding back. We'll return now to Ranking Member McNerney for his questions.

Mr. MCNERNEY. Good morning. Thank you for testifying this morning. Before I get into sort of the pre-prepared questions, what I'd like to know is what's your—Ms. Rubens, what's your opinion of the overall—well, what's the typical fiduciary? Are they well meaning and well intended and well prepared, or just sort of—what I want to avoid is painting a picture of all the fiduciaries as being bad, because I think most of them are out there doing the best they can with lack of training, and I just want to make sure they get credit before we go into this sort of investigatory phase.

Mr. RUBENS. Mr. McNerney, I couldn't agree more. I would tell you that as Mr. McLenachen mentioned, 90,000 of our fiduciaries are out there with responsibility for one beneficiary. And I would go beyond that to say that even for folks that are taking care of more than one veteran, largely you are absolutely right. They are doing a terrific job and a great service for the servicemembers and survivors who have come to the point where they're incompetent to handle their funds. And they're doing a terrific job for the most part of ensuring that those benefits that they're receiving are meant to take care of and are, in fact, taking care of our veterans and beneficiaries, absolutely.

Mr. MCNERNEY. Thank you for that statement. In your testimony, you mentioned that an analysis of the pilot hub improved initial fiduciary appointments by 36 percent and qualified by 13 percent. How does the VA measure timeliness, and can you elaborate on how the VA quantified quality to claim a 13 percent improvement?

Ms. RUBENS. Absolutely. We have targets established for how long will it take us to do our initial appointments, to have fiduciaries established. We have timeliness requirements for how long will it take us to do follow-up visits with those fiduciaries. The quality standard is established, and a review is by the National Systematic Technical Advisory Review Staff, and I believe, Dave, your folks are also in Nashville. And they will do a review of a statistically valid sample of the work being completed, and in this case, by the western area hub, and the staff has identified an improvement in that quality of 13 percent.

Mr. MCNERNEY. So what this tells me is that the effort then is to continue to improve the quality especially from these sort of home fiduciary people that are caring for relatives or people that they know personally?

Ms. RUBENS. I would tell you, sir, that it's across the board, that no matter where that fiduciary comes from, it's important to us to ensure that they're doing a good job of administering the veteran or beneficiary funds.

Mr. MCNERNEY. And this 13 percent is your way to quantify that improvement?

Ms. RUBENS. Yes, sir.

Mr. MCNERNEY. Okay. Are there outside like the OIG or any other group that's collaborated or validated that improvement?

Mr. MCLENACHEN. Not that I'm aware of, sir. However, I want to clarify that in addition to, I believe you're asking about the quality of fiduciary services—

Mr. MCNERNEY. Right.

Mr. MCLENACHEN. —the quality measure that we're referring to is the quality of our own staff in doing the functions that Diana's more than 600 people out in the field doing this work, it's their quality that is increasing as a result of the hub consolidation concept. So that's part of the quality measure that we're talking about.

Mr. MCNERNEY. Okay. Well, I know that we had—in DAMA, we had a hearing last year on this, and I would like to see next year when we have a hearing, that we have another 13 percent improvement. So that's our challenge is to keep improving this and make sure that—whenever you have a system like this, there's going to be temptation for some people, some bad players, to rip the system off. We want to make sure that we have the tools in place to keep that from happening, and when it does happen, to prosecute.

Thank you. I yield back.

Mr. JOHNSON. I thank the gentleman for yielding back, and we'll go into a second round of questioning, and I would like to echo what my colleague Mr. McNerney said. This hearing today is in no way a negative reflection on those fiduciaries that are doing an outstanding job, and that's certainly not the intent.

Our responsibility here on the Subcommittee for Oversight and Investigation is, of course, to make sure that all of our veterans, every single one of them, is getting the benefits and the care that they have earned, and therefore, as we dig down into this, we have questions to weed out, as he said, those bad actors.

With that being said, I want to go back and kind of spin off of what Congressman Runyan was asking. You were talking about if I recall, that you monitor these fiduciaries and monitor their performance. What kind of metrics do you use to determine how your fiduciary program is working? I think if I heard your testimony right, Ms. Rubens, you did not know how long it's taking to get these claims through.

So what are your metrics, how are you reviewing them, and what do you do with the information when you get them, and that's for both of you?

Mr. MCLENACHEN. Well, sir, first of all, as far as metrics regarding fiduciary performance, which I think was the first part of your question, those metrics are set up during the field examination that we do in the selection process. The field examiner actually meets with the beneficiary, meets with the prospective fiduciary, discovers what the needs are of the beneficiary, and in discussing that situation of that beneficiary, we come up with a basic picture of what this particular person needs. And that is actually discussed and given to the fiduciary at that point, so that there's an agreement about what this particular person actually needs.

When I talked about performance, that's what we're talking about. Is this fiduciary ensuring that the needs of this particular beneficiary are being met.

Mr. JOHNSON. Let me qualify my question. We talked about at least one instance that we know of, of a person who is managing 43 veterans, a single mother working full-time with nothing more

than a, one semester of community college background. How—what kind of metrics do you have that would tell you that you've got that kind of situation out there?

Mr. MCLENACHEN. As far as telling us that that particular individual has full-time employment, separate from the fiduciary activities she's doing, I'm not aware of any metrics that would identify that for us at this time, that that may—

Mr. JOHNSON. Do you have any operational metrics that come to you that you review on the fiduciary program, as a part of your operational review?

Mr. MCLENACHEN. We do have those metrics that—

Mr. JOHNSON. What are they?

Mr. MCLENACHEN. —we gather at the central office regarding the performance of our fiduciary activities out there, and that information—

Mr. JOHNSON. Can you provide us with a copy of what those metrics are?

Mr. MCLENACHEN. Yes, sir.

Mr. JOHNSON. Yeah, I'd like to see that. When was the last time that a fiduciary was removed? I mean, assuming that you're monitoring these operational metrics, and you're monitoring the performance of the fiduciaries, when was the last time a fiduciary was removed because of lack of performance?

Mr. MCLENACHEN. Well, sir, I don't have that exact information with me today.

Mr. JOHNSON. Can you provide that to me as well?

Mr. MCLENACHEN. I can, sir.

Mr. JOHNSON. What I'd like to see is, I know you said you came to the job five months ago?

Mr. MCLENACHEN. Five months ago, yes, sir.

Mr. JOHNSON. I'd like to see if you could provide that for the last three years.

Mr. MCLENACHEN. Okay.

Mr. JOHNSON. I'd like to see how many fiduciaries have been removed as a result of performance related issues and the dates that that occurred.

Mr. MCLENACHEN. Yes, sir, we'll provide you that.

Mr. JOHNSON. Okay. Has VA upgraded or replaced the fiduciary benefit system in order to provide an electronic interface for external entities that includes inputting and processing of income and expense related transactions?

Mr. MCLENACHEN. Mr. Chairman, it has not been replaced yet. However, I'm—I can report that a decision has been made to replace it. We have a business requirements document that states exactly what the new system is going to look like. It's been planned. And we have a weekly work group that is looking at how we are going to integrate this new system.

As you know, we're also developing other systems in the VA as we're continuing—

Mr. JOHNSON. Well, I'm well aware of that.

Mr. MCLENACHEN. Yes.

Mr. JOHNSON. Information technology and business systems applications are another very important area that we're interested in.

Mr. MCLENACHEN. This—the fiduciary beneficiary system provides us kind of a unique challenge because as you may know, it's a stove pipe system that exists outside of VBA's corporate database. And so the challenge we have is as we're developing these other new systems, we need to make this external system integrate into those systems. We need to remove the data from the Legacy system, and plug it into the new system that's being developed.

Mr. JOHNSON. Okay.

Mr. MCLENACHEN. And we're currently working on that.

Mr. JOHNSON. According to your testimony, VA's outreach efforts are for qualified fiduciaries, and yet you also stated that fiduciary personnel should be trained to a centralized environment, using a standard curriculum.

So if fiduciaries are already qualified, what would VA be schooling them on?

Mr. MCLENACHEN. Yes, sir. Actually the reference to training being centralized is for VA's fiduciary personnel, not for the fiduciaries themselves. So what I was suggesting in my testimony was, we can do a lot better job of training our own personnel to make sure that we're providing state of the art customer service for these vulnerable beneficiaries, that's what I was referring to.

Mr. JOHNSON. Okay. In your written testimony, you mentioned round tables that VA, the Social Security Administration, OPM and DFAS have participated in. Why is there such a disparity between the Social Security Administration's fiduciary program and VA's?

Mr. MCLENACHEN. Well, I think there's two factors there. One is there is a different body of law that pertains to each, they have their own unique criteria and are substantially different. But in addition to that, the social security system is enormous compared to the fiduciary system that VA runs. Although I believe that we're the second biggest such program in the government, nonetheless, the Social Security Administration's payee program is much, much larger than VA's which poses its own problems.

Mr. JOHNSON. Okay. How is the VA—how are you strengthening the oversight of the fiduciary program? Who oversees the field examiners? I think that's in your area, Ms. Rubens. And how much oversight occurs, and I'm going back to that operational metric review? How does that process work?

Ms. RUBENS. Yes, sir. I would tell you that we are strengthening the program, and I think that it's in two arenas. One, as you've heard Mr. McLenachen talk about, the standing up of the pension and fiduciary service in November, will provide us a number of things for the folks in the field that are implementing the guidance and the regulations. It's that more consistent oversight from headquarters, in terms of devising guidance. It's also, as he talks about the Federal beneficiary system, helping us build new tools. It's identifying things. For instance, in the Salt Lake City Hub, they identified mapping programs to help them be more efficient in how they go out and make our visits to our fiduciaries.

And I would tell you that I think the hub program in itself, reorganizing the infrastructure, sir, in the field, will make a tremendous difference in two ways. One, is that we now will look to consolidate our legal instruments' examiners, who are actually doing the accountings and reviewing the information provided by the fi-

duciaries. We're ensuring there's a more consistent review. But also frankly, sir, while they were distributed among the regional offices, the number of legal instruments' examiners at one legal office might be one, two, or three, or in a large office, you might get up to six or ten, which meant you could find yourself with, I'll say, a shortage of personnel if somebody were to get a promotion, leave the job, retire, what have you.

By consolidating into the hubs, we are going to aggregate that accounting review expertise. We are also then going to ensure that the oversight for our field examiners takes advantage of the fact that they are provided direction and oversight from fewer responsible supervisors. This also take advantage of the fact that jurisdictional lines that may have been an issue when they were out there by regional office are no longer an issue. So we can ensure the most effective and most efficient means to get out and do those field exams.

Our timeframes for doing an initial appointment are set at hitting those at 45 days. That's a record that we monitor. We're currently at about 51, which is not where we want to be. With 58 additional field examiners, we expect that we're going to make a tremendous difference there.

For the review of exams by the field examiner, we have a target of 120 days and are at 116 days. We think that we've got some room; we can continue to improve, but we're hitting our target. And there is a time frame for making sure that we're getting the accounting work in, looking to ensure that those accountings are coming in for our review.

We agree that while most of our fiduciaries are doing a terrific job, it's still our responsibility to look for those anomalies and to look for those bad actors that you referred to.

Mr. JOHNSON. Okay. All right. Back to Mr. McLenachen. You've been in your job for five months, and I certainly sense, you know, a desire and motivation to make this program effective, and I appreciate that.

In your testimony, you said that the VA has initiated a complete review and revision of all regulations and procedure manuals pertaining to fiduciary matters. When was this review initiated?

Mr. MCLENACHEN. Sir, I started in this position in August, and I believe it was the beginning of September where I first started discussing with my Assistant Director, Gary Chesterton, that we initiate that process. I've had people working on that full-time since that—since early September.

Mr. JOHNSON. Okay. Are you aware that in early 2010, the VA stated that a new fiduciary policy was to be published in September of 2010, and that to date, no specific policy has—that has not happened, and the policy is still, as far as we know, is still dated 2005, and a revision has not been released. Are you aware of that?

Mr. MCLENACHEN. Mr. Chairman, based on that information, I cannot answer the question. If you could narrow it down to a specific policy, I might be able to provide you an answer.

Mr. JOHNSON. Yeah, I would certainly like to see that, because September of 2010 has long come and gone. I concur with Congressman Runyan's assessment, this is not rocket science. Why it's

taking so long to get these policies and regulations reviewed and put in place, is a little bit concerning to me.

Mr. McLENACHEN. Mr. Chairman, being in this position for five months, I haven't yet had an opportunity to sit down and meet with your staff, and I'm available to do that at any time if you would like to arrange that.

Mr. JOHNSON. Okay. All right. Thank you. At this time, I yield to Ranking Member McNerney, if he has any follow-up questions.

Mr. McNERNEY. Thank you, Mr. Chairman. Yeah, you asked one of my questions, so I'm a little blank here. But I'd like to follow-up with a remark that you made earlier, Ms. Rubens, that the—and I just want to clarify it. You said that the quality is measured by the staff performance, not by the actual benefits disbursement. Could you clarify that a little bit?

Ms. RUBENS. Absolutely. The quality review that's done by our headquarters quality review staff in Nashville is really to look at how we in the field are carrying out our responsibilities from a review of the accountings, ensure that we get our field exams done, whether they're initial or follow-up. They ensure that as we conduct those field exams, we are following the prescribed guidance.

Those two things are really meant to help us ensure that if there is a concern, a problem with how the fiduciaries disbursing the funds, that that's brought to light. If we're identifying those things, we are pursuing that and ensuring that if, in fact, that fiduciary is misusing the money, that appropriate action is taken.

As the STAR review staff, the quality reviewers, and headquarters review our work, it's to ensure that we are meeting our requirements to identify those kinds of situations.

Mr. McNERNEY. So it sounds like you believe and feel that it's not only a measure of the quality of your staff's performance, but also of how the benefits are being disbursed?

Ms. RUBENS. It is our effort to ensure that the disbursement of those funds is being made in accordance with the guidance that we've got, yes, sir.

Mr. McNERNEY. Okay. In your testimony, you state that the—you've reviewed the pilot's program strengths and weaknesses. Do you have an assessment of the weaknesses? You've talked about the strengths, but you haven't discussed the weaknesses.

Ms. RUBENS. I would tell you that as we look at the pilot opportunities to ensure that we've got enough field examiners out there to meet the needs. Ensuring that we've got good supervision in the right places and doing oversight with those field examiners as well as the accountants, these are things on which we continue to work with Mr. McLenachen.

As the P&F service has stood up, I think it's been one of the best things that we've done for our incompetent veterans to ensure we've got the right guidance and the right oversight. Dave and I have worked very closely together to make sure that we're meeting those needs.

Mr. McNERNEY. Okay. I'm going to yield back, Mr. Chairman.

Mr. JOHNSON. I thank the gentleman for yielding back.

Dr. Roe.

Mr. ROE. Just a couple of—thanks, Mr. Chairman, for yielding. Just a couple of questions.

What sort of a contract does a fiduciary sign with the VA, when you're accepted as a fiduciary, and that's your job?

Mr. MCLENACHEN. Well, sir, there is no contract that's signed. There is a document that we call a fiduciary agreement, which is really just a informing the fiduciary of their responsibilities, the specific needs of this particular beneficiary. So that document does exist, and it is signed by the fiduciary and provided to us.

It's essentially a way for us to inform the fiduciary of what this particular needs—what the particular needs of this particular beneficiary are. But this goes back to the point that I was mentioning an area that we really need to strengthen is the role of the fiduciary in this program, and something I intend to work on.

And that is, that the fiduciary holds an obligation to the beneficiary. That is where the fiduciary relationship is, and that's the one thing that we really—one of the things that we really need to strengthen and clarify.

Mr. ROE. I'm glad to hear you say that, because if—do they sign this document, does it obligate them to check with VA before they release these funds, or to be looked at by VA before they can be released?

Mr. MCLENACHEN. The current policy, sir, is that if an expenditure is going to exceed a thousand dollars, an unusual, a non-recurring expenditure of that amount is going to be made, per current policy is that there does have to be a check with the fiduciary activity, that's correct.

Mr. ROE. So in Tennessee, where this \$900,000 was embezzled, that didn't happen obviously, unless they took it out of, a buck at a time?

Mr. MCLENACHEN. Unfortunately, sir, I cannot comment about that specific case, the facts of that case, and I cannot tell you whether there was a lack of oversight or not. It may have been discovered—

Mr. ROE. Well, it obviously was if \$900,000 got embezzled.

Mr. MCLENACHEN. Yeah. Eventually it was discovered, and there's—thankfully Congress has a law in place that we've implemented that allows us to reissue benefits in those cases, and of course, those matters are referred to the Inspector General for prosecution.

Mr. ROE. I guess just one last question, Mr. Chairman, briefly, and this one bothers me a little bit, because what legal basis is there for VA, the Veterans Administration, to ignore a state court order of guardianship? If a state court, a judge in a court of Tennessee says, you can be—this is a legal guardianship, how can the VA just ignore that, and they have?

Mr. MCLENACHEN. Well, sir, we have a body of Federal law that requires us and authorizes us to run this program. That law is supreme. And we have developed policy that we believe best suits the needs of these veterans, with the exception—

Mr. ROE. So that—back up right there just a second. So what you're saying is, and I'm not directing this at you, but I'm directing it globally.

Mr. MCLENACHEN. Sure.

Mr. ROE. That sounds pretty arrogant to me, to think that a judge in a hometown that knows my folks better than anybody up

at Webber Wood, is now being told that no, you can't be a guardian. This is a judge that may know the family, they may know the circumstances in Surgoinsville, Tennessee, a lot better than anybody at the VA would ever know it.

Mr. MCLENACHEN. Mr. Congressman, let me clarify my statement just a little bit. If that guardian, which has been appointed by the Court, is the individual that this beneficiary wants appointed, then yes, we're going to seek to appoint that person if that's who they want. If it's not who they want, and there's an exorbitant fee being charged by that guardianship created in the state court, we are going to determine whether that's in the best interests of that beneficiary.

I don't know whether you're aware of this, but the fees often exceed by far the four percent authorized by Congress for this fiduciary program. In many cases, and for that reason, we only appoint approximately eight percent—eight percent of our fiduciaries are court appointed guardians.

So we've determined that in most cases, it is not in the best interests of a beneficiary to have a state appointed fiduciary. Now, that does not mean that we're not recognizing state appointed guardians who are family members, or the person that the beneficiary wants.

Mr. ROE. So you're telling me now on the record, that the VA, and I don't know this has or hadn't happened, has had a veteran who said, yeah, this is fine with me, this will be fine, the VA hadn't overruled that?

Mr. MCLENACHEN. I'm sorry, sir. Could you restate the question?

Mr. ROE. Yeah. We've had the state court, the judge, the local judge has said, this will be—this is a guardianship and this person is the guardian. And the veteran says that, yeah, this is okay with me, the VA's never counteracted that?

Mr. MCLENACHEN. That is not my testimony. We often appoint—in eight percent of our fiduciary cases we appoint—

Mr. ROE. Now, back up. That's what you said. You said if the veteran wanted it, and the state court said it was okay, then it was okay. I think that's what you said.

Mr. MCLENACHEN. Yes. If the person that the beneficiary wants as their fiduciary is a state appointed guardian, that is the first person that we're going to look at to qualify.

Mr. ROE. Okay. And you've never—and the VA's never gone and said, no, that's not adequate?

Mr. MCLENACHEN. I do not have that information with me, no.

Mr. ROE. I'll yield back.

Mr. JOHNSON. Thank you. I think we'd like to see that if you could look into that and tell us whether or not that has occurred. Mr. Flores.

Mr. FLORES. Thank you, Mr. Chairman. A couple of questions. As you're going through this regulatory rewrite and overhaul process, a couple of questions on the statutory side. Are there any limitations under current statutes that are preventing you from being able to write all the regulations that you need, or to overhaul the regulations in a manner to make this work better?

Mr. MCLENACHEN. Congressman, at this time, I do not believe that we need additional authority. I think our authority is sufficient to allow us to write the regulations that we need.

Mr. FLORES. Okay. So I think that answered my second question, too. And that is, do you—is there any legislative fix that you need in order to be able to complete this regulatory rewrite?

Mr. MCLENACHEN. One of the things that we have been recently asked is whether we have legislative proposals to develop within the department, and we intend to take a look at the statutes, to see if we can make some recommendations for you that we think might improve the program.

Mr. FLORES. Okay. Well, that would be good, if you can get those to us as soon as you get to that point, that would be helpful.

Mr. MCLENACHEN. We will.

Mr. FLORES. I mean, we'd like to work together on this—

Mr. MCLENACHEN. Yes.

Mr. FLORES. —so that we take—do what our charge is, and that's to take care of our Nation's vets. Thank you. I yield back.

Mr. JOHNSON. Mr. Runyan?

Mr. RUNYAN. Thank you, Chairman. And continuing on the theme of rewriting some of these regs. Our Uniform Probate Code which serves as a standardized and modernized all areas of probate law was not widely adopted until after the VA had adopted its current regulations. And Uniform Probate Code was recently updated in '06. Will the VA take up the Probate Code, Article 5, Part 5, which concerns durable power of attorney into consideration in updating your regulations?

Mr. MCLENACHEN. Yes, sir. In reviewing our regulations, we looked at a number of different sources of modifications that we could make, including those, the Social Security Administration regulations, and any other regulations existing that we could find that might be helpful to us for informing us about a better way to do what we're charged with doing. So, yes, we have looked at those.

Mr. RUNYAN. And are there any guidelines for fiduciaries or field managers to follow when it comes to emergency requests?

Mr. MCLENACHEN. Yes. We have procedures in place for appointing temporary fiduciaries. Just last night, we got a call regarding a specific case regarding a terminal veteran where those exact procedures needed to be invoked. So we do have those procedures in place.

Mr. RUNYAN. It's working?

Mr. MCLENACHEN. Yes, sir, it is.

Mr. RUNYAN. And are you also looking to update any of them to make sure you can work any bugs out of it?

Mr. MCLENACHEN. Those will be included in the regulations that we're working on, yes.

Mr. RUNYAN. Thank you. Chairman, I yield back.

Mr. JOHNSON. I thank the gentleman for yielding back. I have no further questions. Any other Members have questions?

Well, our thanks to the panel, and you are now excused.

Our second panel we will hear from today consists of Doug Rosinski and Katrina Eagle, Veterans Law Attorneys, Pam Estes, who serves as the fiduciary for her son, Jason, an OEF, OIF vet-

eran, and Rick Weidman, Executive Director for Policy and Government Affairs at Veterans of America.

Mr. Rosinski, Ms. Eagle, Ms. Estes, and Mr. Weidman, your complete written statements will be made part of the hearing record. Mr. Rosinski, you are now recognized for five minutes.

STATEMENTS OF DOUG ROSINSKI, ESQUIRE; LAW OFFICE OF DOUGLAS J. ROSINSKI, ESQUIRE; KATRINA EAGLE, ESQUIRE; THE VETERANS LAW OFFICE OF MICHAEL WILDHABER, LLP; PAM ESTES, VETERAN FIDUCIARY; RICK WEIDMAN, EXECUTIVE DIRECTOR FOR POLICY & GOVERNMENT AFFAIRS, VIETNAM VETERANS OF AMERICA.

STATEMENT BY DOUG ROSINSKI

Mr. ROSINSKI. Thank you, Mr. Chairman, Mr. Ranking Member, and Members of the Subcommittee.

I want to also join your statements. This is not about the vast majority of fiduciaries who are struggling to do the best for their veterans. This is about primarily the veteran—the Department of Veterans Affairs' individuals. This is not about VA money, this is about the veterans' money. Every dollar we're talking about today has already been awarded and provided to the veteran. VA is spending the veteran's money at a rate—for the veterans that I represent, at approximately \$600 an hour to write a single check a month. They get \$108 and change at four percent for a hundred percent benefit, that's \$108 to write one check a month.

These metrics that you've been talking about are misleading. They are metrics about policies and procedures. We are talking about people who live day-to-day, dollar-to-dollar, who have to beg the VA fiduciary because of the policies to buy new underwear for a Korean War veteran.

They're about policies and procedures that require and instruct these fiduciaries to not contact the veteran, to not answer a veteran, to not respond to their counsel.

So when you measure how many meetings they have, how long it takes to meet with a veteran, how many days it takes to cash a check has nothing to do with what goes on in the field day-to-day.

What my clients want to know is why, when they are living at home, or under supervised care, their veteran suddenly has to have a VA fiduciary at all. My veterans have had decades of family members giving them care, and handling their benefits without VA interruption.

Suddenly VA appoints a perfect stranger, perfectly unknown to the veteran, who has never contacted the veteran, who will not ever contact the veteran, and is paid money from the veteran's account to withhold the money from the veteran, to place it in bank accounts that they will not disclose to the veteran, and that they will not even disclose under FOIA. They will redact the veteran's own information about his own money from the files they give up.

My clients want to know why that if there is a need for a VA appointed fiduciary, it has to be this stranger. They want to know why this stranger is told to take all of the veteran's finances, all of his bank accounts, and ask questions about his CDs and his—

whether he owns a boat, and what his wife's salary is, and where is that salary put, and then go into the banks and take all of it and not tell them where it is.

They want to know why VA not only will not correct that, when I've had personal discussions with Members or people sitting in this hearing today, and then they will not fix that problem. They want to know why VA defends those practices at every turn in every court in every discussion.

This is not about numbers and procedures and policies. My clients don't care about policies and procedures. They want to know why they have \$100,000 in the bank and they cannot afford the medicine that the VA doctors prescribed last month.

They want to know why the power company is in the front yard, when they have \$50,000 in the bank, and it takes an emergency motion to the Veterans Court before these people will call a power company and tell them they'll pay \$178.

That's what my clients would like to hear today. And I did not hear any of that by the prior panel.

I thank you for the time, and yield back the rest of my time.

[THE PREPARED STATEMENT OF DOUGLAS J. ROSINSKI APPEARS IN THE APPENDIX]

Mr. JOHNSON. Thank you, Mr. Rosinski. Ms. Eagle, you are now recognized for five minutes.

STATEMENT OF KATRINA J. EAGLE

Ms. EAGLE. Mr. Chairman, Members of the Subcommittee, thank you very much for having me this morning.

I want to use my five minutes to address some of the fundamental misunderstandings. First of all, let me be very clear. A finding of incompetency by the VA applies only to their managing of their VA money. There is no catch 22. They can enter contracts. That finding of incompetency applies only to their being able to manage their VA money.

So with respect to having durable powers of attorney and being able to enter into those, they are perfectly fine. The VA has no finding with incompetency. It does not reach that far.

The second basic fundamental misunderstanding, is the law that applies to the fiduciary program. That law states very clearly that the Secretary may find, when it is in the veteran's best interest, may appoint a fiduciary. And before they appoint a fiduciary, that law makes it very clear that the money can still go directly to the veteran.

It can go supervised direct pay. VA's own forms list the veteran as receiving his own money even after being found incompetent. The fiduciary is the last person. So that with respect to the VA form direct payment of the beneficiary, that was not the intent of Congress when they created the fiduciary program. And, in fact, even since the Freeman decision, made challenges to the fiduciary appointments available to veterans.

Just in December 6th, 2011, the VA's most recent VA FAS letter emphasizes another basic misunderstanding. That letter makes very clear one sentence sums it all up. The purpose of the VA Fiduciary Program is to protect the benefits paid to the beneficiaries.

No. I submit to you the purpose of the program is to protect the veteran. It is his money, not the VA's. The VA treats it as if it is theirs.

Another basic misunderstanding is how this process actually works. Ms. Ruben's identified very clearly, when a veteran is proposed to be found incompetent, there are due process systems in place. That veteran can appeal. While that appeal process with respect to the finding of incompetency is ongoing, nothing happens. The moment incompetency attaches to the veteran, however, everything else changes. A fiduciary is appointed, the same day his direct deposit VA money is stopped and changed and diverted to another account with which the veteran has no knowledge, did not approve, and is now getting four percent of that money taken out and paid to someone else he does not know, has not met.

That same money that is the veteran's, is then used, without his permission, without his authority, for a surety bond. The veteran gets to pay for his own money to be protected from him. Before the veteran is asked or even let allowed to try and use his own money, even though found incompetent.

We have in this country, you are innocent until proven guilty, but in the VA system, once you are found incompetent, you can't even be trusted or given a chance to use your own money. They assume you can't, and put somebody else, be it a spouse, a family member, or a paid fiduciary before the veteran himself is given an opportunity to show that he can still do it, even with being found incompetent.

The last thing that I would like you to make sure you understand is that the strict control of the money, while we discuss policies are being changed, while we discuss regulations are being reviewed and changed, every day a veteran has a need, daily lives, life goes on, and they have needs to access of their money.

If they call their fiduciary and in the best of circumstances, weeks go by while they fax in this request to the fiduciary hub in Salt Lake City or anywhere else, and they have to wait weeks to get approval, if they get approval for an air conditioner, for underwear, for heart medication, they have to wait.

While they wait, what do they do? They use credit cards, they get fees charged to them because they have to find other means to pay for things that they need today. The system is not working.

I appreciate your time. I appreciate sincerely on behalf of veterans that I work with, you're looking into this entire program. Thank you.

[THE PREPARED STATEMENT OF KATRINA J. EAGLE APPEARS IN THE APPENDIX]

Mr. JOHNSON. I thank you for your comments, Ms. Estes, you are now recognized for five minutes.

STATEMENT OF PAM ESTES

Ms. ESTES. Chairman Johnson, Ranking Member Donnelly, and Members of the Subcommittee, thank you for inviting me to testify at the VA's Fiduciary Program and for holding this hearing.

My name is Pam Estes. My life and my family's life changed overnight in December of 2005 when my son sustained multiple se-

vere injuries, including severe traumatic brain injury, multiple leg fractures, a lower leg amputation, and second and third degree burns to over 60 percent of his body, as a result of an IED blast in Iraq.

At the time of his injury, Jason was only 19 years old. Since then, my husband, Mike, and I have been caregivers for Jason. I was appointed to serve as a fiduciary in 2007 as he was not able to manage his financial affairs. As both a fiduciary for my son and as a caregiver, I have extensive experience in working with the Department of Veterans Affairs. In fact, I served for two years as a Member of a VA Advisory Committee, on OEF, OIF veterans and families established by former Secretary of Veterans Affairs, Jim Nicholson.

As a result, I have a good understanding of the department and its programs. But my experience of dealing with the Veterans Benefits Administration as it relates to Jason's VA compensation contrasts sharply with the experience of working with the Veterans Health Administration as it relates to my son's care and to the administration of the VA Caregiver Assistance Program established by Congress.

One of the very positive experience with the VHA, particularly in coordinating effectively with its case managers surrounding Jason's care, my experience as a fiduciary and me not even understanding VBA's requirements, has been disturbing.

I certainly understand that VBA has an important responsibility as it relates to safeguarding the benefits of veterans who are unable to manage their own affairs. While this fiduciary program unquestionably has an important mission, my own experience and that of other caregivers of wounded warriors, leave me to question how effectively the program is managed.

Among the frustrations I've encountered in serving as a fiduciary has been the lack of information as to precisely what VBA needed and expected, and the mixed signals it sent. Despite a lack of guidance, I maintain detailed documentation of expenditures for Jason, consistent with my background in accounting. But I was stunned in 2008, when despite the lack of detailed VBA instructions, I received a letter from the VA regional office in Baltimore, which cited my failure to submit your timely accounting is outstanding, constituting a breach of your fiduciary duty, and threatened to remove me as fiduciary.

I find it extremely offensive to be painted as irresponsible when we've been working so hard to do what's best for Jason, including saving much of his money for the future, when we're not there to care for him.

Following up on that letter, I ultimately met with a VA field auditor in September of 2008, and explained that I'd never received instructions about requirements for annual accounting or applicable forms. I was relieved that the official accepted my detailed documentation, and advised me that no further action was needed.

Yet, less than a year later, I received another letter from the VA regional office officials stating that I was delinquent, and this time, directing me to submit a VA form within 14 days, an accounting of all expenditures for Jason going back to 2007. This letter again threatened that I risked being removed as fiduciary. The VARO of-

ficial's letter also responded to an earlier letter of mine explaining that I had never received instructions on how to file an annual accounting to VBA, and stated that in an ideal world, each year the computer would print you a letter, and we would send you the letter and blank forms prior to your accounting date. It's supposed to work that way, but in real life, it doesn't.

VBA's fourteen-day reporting or else directive prompted us to contact the Wounded Warrior Project who brought this situation to the attention of the VBA central office officials and requested a meeting. My husband and I subsequently met with these officials who were deeply apologetic. The meeting was instrumental in resolving the immediate problem, and we assumed accordingly that we would encounter no future difficulties, but we were mistaken.

For the 2011 accounting period, I received a message from the supervisory official in Baltimore indicating that I was subject to a field audit this year. After back and forth messages, the visit had still not been scheduled, and still hasn't been. Fearing another delinquency, I submitted my annual accounting on December 5th of 2011, and further sought to clarify VA policy regarding certain charges to be entered on that form.

In a follow-up letter—in a follow-up to the letter, I called and left messages, but received no response. On January 9th, however, I was shocked to receive a letter stating that I was delinquent again in submitting the required accounting, and threatening to remove me as Jason's fiduciary if I did not comply within 30 days. Today's 30 days, so I'm sure I'll get another letter.

From the perspective of a mother of a very severely wounded warrior, VBA communications like this suggesting that with the stroke of a pen, I could be deemed unqualified and lose the right to manage my son's finances are terribly stressful. Despite my being a loving caregiver, the program operates in a manner that leaves me feeling as though something threatening is always hanging over my head.

Given that that's been my experience, imagine what this process might be like for a young spouse, without my background and recordkeeping, let alone my years working in accounting.

I understand the need for methodical recordkeeping and reporting and the interest of documenting appropriate financial management of Jason's compensation, but I do not understand an agency that is so quick to threaten, so unresponsive to questions, so much of a black hole. Nor do I understand why VBA cannot better align its reporting requirements with a much less detailed and less burdensome level, a reporting used by the Social Security Administration.

Some two and a half years ago, my husband, Mike, attended a caregiver summit here in Washington sponsored by Wounded Warriors. One of the most common and deeply felt concerns expressed by the caregiver participants was with the VA Fiduciary Program. Which many participants described in some details as confusing, demeaning, highly intrusive, and often unreasonable, and disallowing expenditures. The then Director of VA's Compensation and Pension Service attended the session of the conference, and on hearing a presentation of these problems, promised fiduciary program reforms. But it's not apparent to me that such reforms have

taken place, or if any steps were taken, that they really have taken hold.

On behalf of the many other caregivers who as fiduciaries for their loved ones, have had experiences like mine, I hope this morning's hearing can help achieve such changes.

[THE PREPARED STATEMENT OF PAM ESTES APPEARS IN THE APPENDIX]

Mr. JOHNSON. Thank you, Ms. Estes. Mr. Weidman, you are now recognized for five minutes.

STATEMENT OF RICK WEIDMAN

Mr. WEIDMAN. Mr. Chairman, thank you for allowing us to present our views here today. And thank you moreover for having this hearing.

Going back to at least 2006, it seems like the only time we make progress and fits and starts, is when there's a hearing coming up. So I guess we should have more hearings, maybe we'd keep that progress going. But hopefully, this time it's going to take.

The first thing about this program is that there's big bucks involved, and any time there are big bucks involved, you better make sure that you have all of your safeguards in place. And that's the first thing, point I want to make.

The second point is, it's not a financial program. It is an extension of a clinical program, and that's a fundamental misunderstanding of this program. If this individual, and the former age, 60 years ago, many of these veterans would be in a long-term care facility, but they don't exist anymore at VA. And therefore, they're living independently.

So at nowhere in this, has anybody talked about, is this person eating correctly, do they have access to proper nutrition, do they—is their shelter warm, do they have warm clothes for the winter time, do they have an air conditioner, et cetera. It's all an extension, if you will. What we should be concerned with is a medical model and hopefully people getting better.

The third point I wanted to make is, this is a drastic step to take to infantilize, if you will, a person who had taken that step forward, pledging life and limb in defense of the Constitution, and therefore has been lessened by virtue of that service. And it should be rare.

There are a lot of things today that in terms of doing financial literacy classes at each medical center or CBOC or somewhere available in the community, putting the individual's bills on—that are recurrent on automatic pay for him or her, and many things short of taking away their money to make decisions at least on anything, and giving it to a stranger, as you've heard here before.

There should be, and in our view, never a case where there's a percentage of retroactive benefits that are paid to the individual, and a fiduciary takes a percentage. This happens though. There are two recent cases that we know of. One that where Katrina is an attorney, and another with our folks in New Jersey. Where there was a large settlement, and hundreds of thousands of dollars, and without the knowledge of the veteran, he was—a fiduciary was

appointed, and a huge chunk of this was given to a person the veteran had never met. This doesn't make any sense.

They should be recompensed for services rendered. And the best model is to think about what you all have done here in this Committee in passing caregiver legislation. Which makes a great deal of sense. Where there are a certification, and it's based on care provided that is an extension of the medical system.

Yes, you need to pay the bills on time, but a lot of that can be taken care of by computerization and automation of the accounts today. And our real concern should be the welfare of this individual, number one. And number two, if you have to take that drastic step now, what is being done to help that person get better and get away from, get out of the fiduciary program, and return to full autonomy. And nobody talks about that. There aren't any clear procedures for getting out of the fiduciary program once you're stuck in. And this becomes a catch 22, almost like a hundred years ago, that if you got stuck in the state hospital, you couldn't get out, you couldn't get out.

It was assumed that anything you said that you were nuts, and therefore, you were stuck in all of your basic rights under the Constitution of the United States would be taken away. Well, these are folks who put their lives on the line in defense of the Constitution. And if they want their full rights restored in terms of autonomy, then there should be a clear way to exit the program.

And there is apparently now a move to rethink things, and I was glad to hear the first panel talk about that. I must tell you that they have not contacted anybody in the veteran's service organizations. They haven't contacted Committee staff, they haven't contacted Committee Members, and exactly who are they going to talk to, to rectify some of the problems that we have identified that they seem to be blissfully unaware of.

My guess is that those discussions on the new regulations don't include any interface with people on the Veteran's Health Administration side, and they need to.

Mr. Chairman, I thank you for—once again for this opportunity to appear, and I'd be glad to answer any questions, sir.

[THE PREPARED STATEMENT OF RICK WEIDMAN APPEARS IN THE APPENDIX]

Mr. JOHNSON. I thank you all for your statements. Let's go directly into questioning. Mr. Rosinski, in your experience, what is the significance of VA's Form 21-4703 when it comes to fiduciary authority?

Mr. ROSINSKI. Mr. Chairman, that's one of the roots of the problem here. You talked about it briefly in the previous panel. But essentially, that is a contract. That is the—those are the rules for this fiduciary, and I always put quotes around fiduciary when it's and/or qualified as a VA appointed fiduciary.

One of the key points here is this is not a fiduciary. These people are agents of VA, and this form establishes that. There's various versions of this form in the files of fiduciaries, but it explicitly requires that this VA appointed fiduciary only do what VA authorizes. And—

Mr. JOHNSON. Okay. So that's basically the contract between the VA and the fiduciary?

Mr. ROSINSKI. Yes, sir. And it is—

Mr. JOHNSON. And their responsibility for the veteran.

Mr. ROSINSKI. And it is—and if you read it, they have no responsibility for the veteran. They only do what the VA says.

Mr. JOHNSON. Yeah, we're going to get into that. I apologize for cutting you off, but for the sake of time, we're going to try to keep our answers short, so we can get through all of these questions, because there are some very, very important ones here. So please don't be offended if I move us along.

Ms. Eagle, if VA is paying a fiduciary a percentage of a veteran's compensation, only to allow VA to have the final say, then why pay a fiduciary in the first place?

Ms. EAGLE. I have many veterans and clients who ask that very same question. I don't understand it myself. I find it ironic that I have several cases where the veteran is paid also, excuse me, his social security benefits, and he has no fiduciary managing his social security benefits, but the VA finds fit that he must be appointed a fiduciary for his VA benefits, which also then gets sucked into including his social security benefits.

Moreover, as Mr. Weidman was saying, with respect to veterans who try to get out of the program, I've seen many instances of retribution, so to speak, in that when the veteran applies to get out of the fiduciary program, he is then found perfectly fine with his medical condition, the underlying medical condition be it physical or often times a psychiatric condition, and therefore he is reduced. And that is encouraging the veteran to say nothing, go along, and not question or cause problems.

Mr. JOHNSON. And I want to read this paragraph for everyone's attention out of that form we're discussing. It says, approval for VA use of—"Approval for use of VA funds," and this is the 21-4703 that we're discussing. "VA must approve any use of a beneficiary's VA funds. You," and I'm presuming that's the fiduciary, "agree to use these funds only as specifically authorized by VA. You agree to request VA approval for all spending of these funds, unless VA has previously authorized the expenditures. Any questions regarding authorized expenditures should be addressed to the fiduciary activity at the address and phone number on the front side of this form."

Ms. Eagle, in your opinion, should VA remove this paragraph in question on VA Form 21-4703?

Ms. EAGLE. Yes.

Mr. JOHNSON. Okay. Thank you. Ms. Estes, you mentioned that you submitted the annual report to VA but have heard nothing since. When is your last day to be informed of the status of this issue? You said today, correct?

Ms. ESTES. They told me I had 30 days, so I'm assuming—I took 30 days from the postmark on the envelope, that would be today.

Mr. JOHNSON. Okay. What results, good or bad, have you experienced in the fiduciary program? Now, that's a big question, but

Ms. ESTES. When there is contact, it's fine. I mean, when they come out and I talk to them, we go over the expenditures and stuff,

I don't have a problem there. It's like a black hole. I don't get any return calls when I call and leave messages. I was afraid to send the accounting because they require originals of everything, original bank statements and stuff like that, and you're not handing it, you're mailing it, so I suspected something like that might happen, so we sent it certified and everything. And even—and then I followed up with a phone call saying I did this, I know I was supposed to have an audit, but nobody came out, so I'm submitting it, and so then we got the letter that said, I hadn't submitted it at all.

Mr. JOHNSON. So basically it's miscommunication, lack of communication, lack of follow-up—

Ms. ESTES. There would be no communication, right.

Mr. JOHNSON. —no communication?

Ms. ESTES. Right. There's no communication.

Mr. JOHNSON. Okay. Ms. Eagle, on the first panel, we discussed VA waivers for fiduciaries. And if I recall the testimony, they were not aware of waivers being granted for certification or fiduciary qualifications. Do you have any experience with VA fiduciary requirements being waived?

Ms. EAGLE. I do. What I find and what Mr. McLenachen was talking about is that a fiduciary for the first time will be reviewed, background checks perhaps performed. What I see happen in all of the cases I have reviewed, and assisting the veteran is that if that fiduciary has been at all ever in the VA system as a fiduciary previously, the background check is waived, criminal background checks are waived, et cetera, et cetera. So once he's in, it's good to go.

Mr. JOHNSON. Okay. Mr. Rosinski, is the issue of a person with a criminal background being allowed to serve as a VA fiduciary an isolated incident in your view?

Mr. ROSINSKI. Mr. Chairman, there's no way to tell. As Ms. Eagle just said, they waive all of the background checks I've ever seen. And also, my experience is, all they ask is, they're asked to check a box, have you ever been convicted and served more than one year for a felony, yes, no. So I'll leave it to you whether a convicted felon is going to answer that yes, no. That is, as far as I know, the background check. I have never seen anything else, and that is what is waived on top of it.

Mr. JOHNSON. Mr. Rosinski, in your experience and clients you've represented, what is your background of some of the VA fiduciaries? Have you seen incidents where fiduciaries have been removed?

Mr. ROSINSKI. The only fiduciary that I know was removed, was a daughter who was taking care of her 81-year old father, and was a registered nurse, and had been taking care of her father full-time for two decades, had retired from being a nurse to do that. She took her father to an Alzheimer's clinic because he has advancing Alzheimer's, and VA turned around and fired her as fiduciary, and has registered a complaint for misuse of those funds because they were not preauthorized.

I've also—that's my example of firing. The issue of qualifications, I had the privilege of deposing two actual fiduciaries in the State of Texas. One was a cabinet salesman, who in 2009, got his first fiduciary appointment. In 2011, November 2011 when I had de-

posed him, had 53. He had never heard of a fiduciary until someone suggested that this would be a good job to have, since he had had a heart attack.

The other fiduciary there is the full-time working single mother, who incidentally said her father had been a VA fiduciary, and that's how she found out about the program.

Mr. JOHNSON. Okay. Ms. Eagle, given the three to five percent fee paid to a fiduciary for administering a veteran's account, what purpose would a fiduciary have for hoarding a veteran's money?

Ms. EAGLE. I think that the purpose of hoarding has nothing to do with how much they're being authorized from the veteran's money on a monthly basis. The reason they would be hoarding, and there's two different kinds of fiduciaries that I have dealt with. The hoarding is encouraged by the VA Fiduciary Program leadership, because they are to save as much money as possible, in case of future emergencies.

Keep in mind that these are monthly recurring benefits. So needing to save \$100,000 when the veteran's going to get paid \$3,000 every month until and unless he passes, there's no need to save that much money.

Second of all, lots of these fiduciaries are banks. It is in their best interest to keep as much money in their accounts as possible. So those are two possible reasons I see for hoarding other than you have people who have not had background checks performed, who may not have the veteran's best interests at heart.

Mr. JOHNSON. Okay, thank you. With that, I yield to the Ranking Member for his questions.

Mr. MCNERNEY. Thank you. You know what I want to say is wow, what a difference in point of view between this panel and the prior panel. In the prior panel, seemed like well-intentioned people with a set of regulations that they need to follow, and from your point-of-view, the fall-out of what that looks like from the veteran's—from the beneficiary's point-of-view, very, very different, striking.

The three to five percent of what a fiduciary—does that apply to all fiduciaries, or is it just the so-called the professional, what I'm calling professional fiduciaries? And does that come out of the veteran's benefit or is that some other fund that produces that three to five percent?

Mr. ROSINSKI. Congressman, if I may. Yes, by law, by Federal statute, they can pay up to four percent to any fiduciary that's quote/unquote a paid Federal fiduciary. It generally applies to these strangers who are doing it strictly for the money. The VA determines this in some kind of black box. I've seen two percent, three percent, and four percent for successive beneficiaries or fiduciaries assigned—

Mr. MCNERNEY. So the VA decides this—

Mr. ROSINSKI. The VA decides it, and it is clearly everything we've talked about today is paid from the veteran's money. Nothing here is paid by VA money.

Mr. MCNERNEY. Well, that's a problem.

Mr. ROSINSKI. And why I also believe it's why the priority is not as it should be.

Mr. MCNERNEY. But there's no different set of regulations for a professional fiduciary as there are for family member fiduciaries?

Mr. ROSINSKI. No, sir. It is one set of statutes and one set of regulations. Again, what I believe is, they are well intentioned, they've just flipped the program on its head. They're protecting the money versus protecting the veteran.

Mr. MCNERNEY. So how much does authority does a fiduciary have in disbursing money?

Mr. ROSINSKI. Absolutely none. It is—you cannot serve two masters. The issue of fiduciary in any definition is you owe the highest duty to the beneficiary. These people, as the Chairman read, have no authority to do anything, and indeed in testimony, they said they will not do anything. One of them said they would let the veteran go homeless, they would let the veteran get sick if the VA hadn't approved the medicine, because the VA would take all their cases away. That's in—

Mr. MCNERNEY. So that's another problem?

Mr. ROSINSKI. Oh, yes, sir, that is the—

Mr. MCNERNEY. I mean, you don't want the fiduciaries to have all Draconian control over the money because then that makes the veteran dependent on the fiduciary, but you want to have a fiduciary with some amount of responsibility, so that they can make decisions in the benefit of the veteran.

Mr. ROSINSKI. Congressman, all 50 states, and I believe all the territories have codes of fiduciary duties. All the fiduciaries that I have personally sued, that are VA fiduciaries, and the VA's position is, we don't have to follow those codes. That is why they're allowed to call them fiduciaries, and yet, the VA bureaucrat, if I can use that term, which could be four or five different people at any one time, whoever answers the phone for the fiduciary is making the day-to-day decisions. And if that fiduciary doesn't do what that guys says, he loses up to \$108 a month per fiduciary. That is—you cannot fulfill that—

Mr. MCNERNEY. So are there another set of fiduciary rules out there besides the VA that would be—

Mr. ROSINSKI. There's the model probate code. Every state has case law and statutory law about what a fiduciary is supposed to do for a beneficiary—

Mr. MCNERNEY. Right.

Mr. ROSINSKI. —regardless of appointment. The VA supremacy argument was explicitly rejected in Texas. Because there isn't. It was not the intent of Congress to push away all fiduciary duties and the whole probate code of all 50 states in 5502.

Mr. MCNERNEY. So, Mr. Rosinski, if there was one or two basic things you'd like to change, what would they be, in order to—I mean, is this something that can be done incrementally, or is this something that just needs to be erase the slate and start over?

Mr. ROSINSKI. As I've said, I have not been able to get an official answer to any of these questions, or the questions I posed in my written testimony. They refuse to answer. I would like to know.

The best answer I've gotten was when I got the fiduciary manager from the Waco office on the phone one time, and the bottom line was, he said, look, this is the way I've always done it, and this is the way I'm going to do it until somebody says I don't have to

do it this way anymore. And as I've said, I've had conversations with people in this room, all the way up the chain, and they know about these cases, they know about that conversation, and they haven't told him to do it any different.

Mr. MCNERNEY. Mr. Weidman, comment? Do you have a comment on what would the basic approach you'd like to take to reforming this process?

Mr. WEIDMAN. It would several fold, Congressman. The first and foremost is folks to my right and distinguished colleagues here are correct, it should be a veteran's centric process. They're spending millions of dollars in VHA to try and shift the medical model to become veteran centric as opposed to institutionally centric, and that should be extended.

Any of the fiduciary program should come—be an extension, if you will, of the case manager for the medical condition, one. And additionally, I think we're way too quick in putting people into the fiduciary program, to strip them of the control, most basic control of their own life. And there are many ways that we can assist the veteran to pay the bills on time, to make sure they have shelter, clothing, et cetera, and get to the doctor.

Having a bank, banks are not known for their great bedside manner, and if anybody here has a bank that has a great bedside manner, I'd like to talk to them, to that bank. And it's—so it's not protecting the vet, and that was Congress' intent from the outset.

Mr. MCNERNEY. All right.

Mr. WEIDMAN. And so if they involve the veteran service organizations, if they involve the community at large, particularly the families of the more recently separated veterans who have been—have a medical condition that may even necessitate a fiduciary, somebody else controlling their money, that's what should happen. It should be open, it should be transparent. Nothing about this program is in conformance with the Executive Order issued in 2009 on transparency and accountability, and it needs to be.

Ms. EAGLE. Congressman, if I may, add with what Mr. Weidman was saying.

Mr. MCNERNEY. Do you wish to—

Mr. ROSINSKI. Absolutely, go ahead.

Ms. EAGLE. Thank you. First of all, it is Draconian. The veteran is completely dependent upon reaching that fiduciary, getting him on the phone, and getting permission for the money.

Second of all, any money that is in an account that a fiduciary is the custodian of, none of that bank account information is ever, ever shared with the veteran. The fiduciary is required to submit bank statements and bank account information on an annual basis only back to the VA. All nine of the cases that I am working on right now, my clients have no idea how much money to the penny is in their own accounts, of their VA money. It is completely Draconian.

Second of all, with respect to these changes in the fiduciary hubs, I have two cases within the last two weeks, my clients who I have represented for a year, have gotten letters saying, we need to have updated information from you, you have no representative that we know of, and if you don't inform us in 30 days of where you are, we are going to stop payments to you. I didn't get a copy of that

letter, and these people who are saying we're making changes, the changes on the ground in the local level are not productive, and are not efficient or effective. My clients are scared that they're going to lose all of their money, and I can't even assist them because their system doesn't have me on their books after a year of representing them.

Mr. JOHNSON. Thank you. Dr. Roe.

Mr. ROE. I thank the Chairman for yielding, and I want to thank this panel for advocating for veterans. I thank you for that.

And to you specifically, Ms. Estes, I worked as a veteran of the Medical Battalion, 2nd Infantry Division, as a congressman and as a father, I want to apologize to you personally for what you have had to go through, and I want to thank you for the service of your son. And I sincerely mean that. If we didn't have people like you and your son, we wouldn't have a free country. And we shouldn't treat you like this.

Ms. ESTES. Thank you.

Mr. ROE. And I'm embarrassed to be sitting here listening to this personally. It is embarrassing to me as I said as a father, as a veteran, and just a citizen of the country. We don't need to be treating our wounded warriors and heroes this way. We ought to be advocating for you, and thank you for taking care of your son, who gave—almost gave his life in service of this country, and has horrendous injuries that are going to have to be taken care of, and as you said, you are like a lot of people, like a parent thinks, what happens to my children after I'm gone.

Ms. ESTES. Right.

Mr. ROE. And you're trying to prepare for that now, and it's not being made any easier.

Ms. ESTES. No.

Mr. ROE. So I just wanted to say that—

Ms. ESTES. Yes.

Mr. ROE. —to you here before I had to leave. And to the panel, and I guess, Ms. Eagle, back to you or any of you who want to, if a veteran gets a—you know, it takes a long time sometimes to have these determinations. If a veteran were to get a lump sum of money, 1, 2, \$300,000, and is deemed incompetent, does—and gets a fiduciary, does the fiduciary get four percent of that, or just whatever transaction? So if they got a \$200,000 or \$300,000 and they got a—they would get 8 to \$12,000?

Ms. EAGLE. I do not have any cases—I have heard accounts where that has happened. None of the cases I have brought to the Congress—to the Subcommittee's attention include a percentage of retro benefits going back to the fiduciary.

Mr. ROE. I would hope that would never happen.

Ms. EAGLE. But let me be clear, I have several cases where the retro benefit has been awarded, and then subverted to an account that the veteran cannot, cannot access at all.

Mr. ROE. And then—

Ms. EAGLE. So he cannot access that money.

Mr. ROE. And then what you said a minute ago, you also said that then they didn't know what happened to the money, that after—I mean, even after you took my money and spent it some way, I don't even know what then happened to it; is that correct?

Ms. EAGLE. That is absolutely correct.

Mr. ROSINSKI. Mr. Congressman?

Mr. ROE. Yes, sir?

Mr. ROSINSKI. I have a case where we actually did take the fiduciary to state court to, you know, under probate code and say what's going on. The day the judge said he was going to rule on that, and we had the hearing, the VA sent them a letter, and they moved the money to a new fiduciary without informing us or the Court, and it took us three weeks to find out even who had the money. And then that person cut off the benefits to the person who was trying to find out about it. And now after many, many months, the only way I know where it is, is that the general counsel in that office has started to tell us things, and he's been very—the only person I can say has done his moral duty, if not, regulatory duty, and we now know that that money is in VA hands again, and that that veteran has passed. So now, that money will never get to him, and we have to follow the hoops to get it to his estate.

Mr. ROE. Well, the fiduciary at my house is my wife, and I think she does a little better than four percent, but at least I know what's going on with the money. And, you know, I think it's fair, only fair to—for a veteran and their family to know what's happening to their money. I mean, it's not like in Ms. Estes' case with her son, everything—we can't—I can't do enough for him. I can't—this government can never do enough for him, because his life in defense of this country was forever changed.

So I'm sitting here and telling you now, we need—whatever we're hearing today, for her, it needs to stop yesterday. And we need to be working for her, not against her. And I'm beyond frustrated when I heard her testimony. I read it last night, but I'm glad to hear it again.

Ms. Eagle, again do you or anyone, in your written testimony, you discuss a case involving Mr. Boatman's wife. Would you just elaborate on that just a moment?

Ms. EAGLE. I would be happy to. That case is troubling on so many different levels. I have documents from that veteran's file. The wife was the spouse payee for ten years. There are years, ten years worth of reports by field examiner, VA field examiners that she's doing an excellent job.

Suddenly in July 2011, a new field examiner arrives at the house, looks at some accountings, says this is all wrong, and on the same day, the fiduciary agreement, claimed not to be a contract by VA people here today, was signed with a VA appointed fiduciary. The money direct deposited VA—I'm sorry, direct deposited veteran's money was stopped, ordered stopped all on this same day, July 11, 2011, and then the veteran wasn't even informed of any of this until ten days later.

He retained me. I have brought this specific case to people in this room's attention, and nothing has been done except for last week, he is now no longer part of the fiduciary program, only because he was found competent, but the money has not been returned. The four percent to the VA appointed fiduciary has not been returned, and for the record, it was taken in the constitutional sense, nor have I been provided an investigative report of why this happened in the first place, and what has been done.

And finally, the VA's fiduciary supervisor who I have had direct conversations with, approved all of these actions that I've described, and he's now been promoted to one of the hubs.

Mr. ROE. So what we've done is we just took his money away from this veteran, am I—I mean, just took it.

Ms. EAGLE. Yes, you did.

Mr. ROE. And got spent, and he has no way to get it back?

Ms. EAGLE. He has no way to get it back, and he as yet to get it back, and here we are.

Mr. ROSINSKI. And if I may add, Congressman.

Mr. ROE. Yes.

Mr. ROSINSKI. He appealed his finding of incompetency, and he prevailed on that. So they never should have taken it at all. They didn't even let the process run. They were so eager to help this guy, they didn't even let the process run, they took his money far—

Ms. EAGLE. And he appealed the event that led to all of this. He sent letters in. This person arrived in my house, my wife was in tears, we don't understand what's going on, we've submitted accountings all along like we were told to do, that VA regional office didn't get it, I don't know why, but we sent it in. Everything that is supposed to happen, did happen all the wrong way.

Mr. ROE. And I thank the panel and I yield back.

Mr. JOHNSON. I thank the gentleman for yielding back. Mr. Flores.

Mr. FLORES. Thank you, Mr. Chairman. I also want to thank the panel for attending today. This has been a very helpful discussion. Ms. Estes, thank you for your service to your son, and also for your son's service to our country.

I'm going to try to get through three questions quickly. First of all, would it be helpful, do you think, if this Subcommittee sent a letter to the VA and asked them to directly seek VSO feedback? Do you think that would be helpful? Mr. Weidman, you more or less brought this up.

Mr. WEIDMAN. You're talking about what is the clear procedure for getting out of the program?

Mr. FLORES. No, no. Would it be helpful—you said that the VA had not sought VSO feedback in this process.

Mr. WEIDMAN. That's correct, sir.

Mr. FLORES. Would it be helpful for us to write a letter to direct them that—to seek that help?

Mr. WEIDMAN. You know, that's—well, yes, sir, it would, but it's the kind of thing one would think that that's the first thing you do. And—

Mr. FLORES. Well, I went down—

Mr. WEIDMAN. If all parties concerned get their perspective, do information gathering, and then write the thing, instead of publishing, you know, interim rules or proposed rules and—

Mr. FLORES. I'm going to cut you off.

Mr. WEIDMAN. —we—

Mr. FLORES. I've got to go, but thanks for the feedback. Mr. Chairman, I'd ask that we send that letter, if that's appropriate.

The next question is, and this is more of a philosophical question. Do we have a problem with—and this is for anybody who wants to

answer it, do we have a problem with the regulations and the process and the rules, or do we have a problem with the culture of the bureaucracy?

Mr. ROSINSKI. The latter.

Mr. FLORES. Ms. Eagle?

Ms. EAGLE. Absolutely the latter.

Mr. FLORES. Ms. Estes?

Ms. ESTES. Yes, the bureaucracy.

Mr. FLORES. Okay. Mr. Weidman?

Mr. WEIDMAN. It's a corporate culture, but it's also the wrong paradigm. It should be a medical paradigm, sir.

Mr. FLORES. Okay. Well, see it's one thing to write rules and regulations, but you could take all the rules and regulation process and stick it in a bad culture, and you're still going to have a bad outcome. And so, we're going to have to work with the VA somehow to try to figure out how do we fix the culture. Because I was sitting here listening to your testimony thinking, we could write a thousand pages and not fix this.

Ms. EAGLE. Congressman, to follow-up on what you're saying, and I apologize, but again, we're talking about people. And at the very local level what happens when the veteran is found incompetent, and a fiduciary is appointed, that letter simply says, we have appointed this person, XYZ because it's in your best interests. They don't explain why the veteran himself doesn't get an opportunity to be his own best fiduciary. They don't explain why a spouse doesn't qualify. They don't explain why anyone else that they've asked to be appointed does not qualify. They simply say this person is in your best interests now appointed.

Mr. FLORES. Okay. Thank you. And the last question is, and this is a repeat of the first question I asked the first panel, and that is, based on you all's experience, do you—is there any statutory fix that's required, is there any legislative fix that would be helpful to address this issue?

Mr. ROSINSKI. I am working on the state level to pass a law, which I think would help, is that simply, that VA appointed fiduciaries must follow the laws in the state in which they practice their fiduciary duties. And that's all that's necessary. All the states have hundreds of years of law, and that does not interfere, or should not interfere with the VA, which as a high level just says, go do it in the best interests. And I've asked that specific question to VA officials and in each court case, what are the conflicts with that. They have identified none, and no one has been able to identify it.

Mr. FLORES. Okay. If you would pass that along to us, I think we can make some determinations as to whether or not we can be helpful with that. Ms. Eagle, you looked like you wanted to say something in response to the question.

Ms. EAGLE. I only think that it should—it troubles me and I get the sense that it should trouble all of you, that when I first was retained in several of these cases with veterans who have durable powers of attorney appointed court square good to go, and we bring these and I was thinking, okay, maybe the VA doesn't realize, and we've brought that to their attention. Nothing changes. They don't honor it, they don't explain why they won't honor it, except for,

they don't have to, our laws trump, anything else—our laws are supreme.

Mr. FLORES. Okay.

Ms. EAGLE. That's not the way it's supposed to work.

Mr. FLORES. Okay. Mr. Weidman, Ms. Estes, any additional feedback there?

Mr. WEIDMAN. It's—I agree with the proposal that Mr. Rosinski talked about, but I do think that in a Committee report to any such law change that talking about making it veteran centric and coordination with VHA clinicians, which currently isn't there. There's not even a consciousness that it's important, sir.

Mr. FLORES. Okay. Again, we would appreciate your feedback. As soon as you can get us that, we'll see if we can help with the legislative fix. Thank you, Mr. Chairman, I yield back.

Mr. JOHNSON. Thank the gentleman for yielding back. Mr. Runyan.

Mr. RUNYAN. Thank you, Mr. Chairman, and thank all of you for opening, I hope, many people's eyes to this situation. And, Mr. Chairman, you know, being on this Committee as the Full Committee level, I think most of us remember when we address this fiduciary problem with constitutional rights to the Second Amendment, it wasn't but several months ago, we had to deal with this in this exact Committee. Now, we're talking about financial instances, but that right there is a constitutional right that had been taken away from many of them that we addressed right here in this hearing room.

Mr. Rosinski, going back to my last question to the first panel, in your experience dealing with fiduciaries or field examiners when it comes to emergency requests, do you have any background on them?

Mr. ROSINSKI. Well, I think the answer ducked the question. There is a process for a temporary fiduciary, but that again could take months. I mean, they were talking about in the interim. If a veteran needed heart medicine, you've got to send an e-mail, call somebody, try to get a hold of a fiduciary who's been instructed not to interact with you, and it took us two months to get that. I don't know a bigger emergency than that, maybe he's bleeding or something.

But there is no—the problem is it's this chain. The fiduciary does not have the authority of any other fiduciary.

Mr. RUNYAN. Ms. Eagle?

Ms. EAGLE. I echo what Mr. Rosinski was saying. I have cases where a veteran had to go out of town to attend a family funeral. Family funerals don't wait, and he couldn't get a hold of the fiduciary, and when he did, the fiduciary then had to get approval from VA in order to approve the money that he needed to take a road trip to northern Texas for a family funeral.

I have air conditioners that couldn't get approved even with the help of the prior fiduciary program manager, Tom Murphy. I have cases, heart medicine in Texas. The daughter has spent her own savings and has gone into debt, to fund, and we had to go to veteran's court and get them to move and release \$1,800 to reimburse her for the months of heart medication because the fiduciary would not pay it, because he did not have VA approval.

Mr. RUNYAN. And, Ms. Eagle, why do you think advises veterans to spend all of their other sources income prior to the VA funds?

Ms. EAGLE. Because the VA sees it as their money, and they want their money saved, not spent, not used, until everything else is spent.

Mr. ROSINSKI. And a shorter answer to that is if that they spent all the VA money, then the fiduciaries wouldn't have anything to do.

Mr. RUNYAN. Point taken. And, Ms. Eagle, thus far, how is the VA responding to the Freeman decision?

Ms. EAGLE. At the local level, I have—if I had a quarter for every time I've heard, huh, I haven't heard about the Freeman case, we could all go have lunch right now.

Word at the leadership level is not making it to the local level. Real changes are not happening. Time and again I hear, this is how I've always done it, this is how I'm going to keep on doing it, politicians come and go, I do it my way, until I am forced to do it a different way.

Mr. RUNYAN. And with that, Chairman, I think obviously the other day, we had a breakfast with the Secretary, and I think he has a lot of that same concern, where it's not getting down to the people that are taking care of our veterans, and I think that's a huge part of this bureaucracy that we're having to tackle here. So with that, I yield back.

Mr. JOHNSON. I thank the gentleman for yielding back, and I certainly concur with that. And so we're going to talk about that here for just a minute.

Ms. Eagle, the Freeman case, that's the one where the veteran's money was taken, and now he can't get it back. Is that the one we're referring to that you were talking about just a few minutes ago?

Ms. EAGLE. That is one of the cases where the veteran's money has been taken and he can't get it back. The Freeman case is the case that the veteran's court took up on petition, where the sister had applied to be the fiduciary, and the VA, the old days was, fiduciary matters are at the sole discretion of the Secretary, thank you very much, have a good day.

She challenged that at the veteran's court, the veteran's court found that like all issues with regards to the provisions of benefits, the fiduciary program affects the veteran's money, and therefore, it should be appealable.

Mr. JOHNSON. Which case is it, the one that we were talking about earlier where the veteran was—his money was taken, he was now found competent, but his money is locked away?

Ms. EAGLE. That is Mr. Boatman—

Mr. JOHNSON. Boatman, okay.

Ms. EAGLE. —out of the Waco regional office.

Mr. JOHNSON. Well, I thank my colleagues for all the questions. I thank the panel for being here, and you are now excused.

I think it's safe to say that shocking is an understatement for what we have heard here today. I—in my experience as a military commander, where you see problems like this it's the iceberg effect. What we find out, the ones that we know about, it would probably

shock us to know what we don't know about, and that's what concerns me.

I—there have been numerous hearings over the years about this issue, and I am tired, and am weary of hearing apologies, and broken promises. I want it fixed. And I can assure you that the O&I Investigation Subcommittee is not going to lay this down. I am—I have reason to believe that there is concern from some of these representatives of these veterans on panel two, that there could be retribution. I can assure you that the O&I Investigation Subcommittee is going to be monitoring this situation closely. And it will not take lightly any form of retribution or roadblock to getting these veterans what they deserve.

In fact, again as an operational commander, I can tell you that the people in my—under my command, paid a lot of attention to the things that I was concerned about. So, Mr. McLenachen, I'm going to give you an opportunity. I want to know from you one week from today in a letter signed by you, what you're going to do to address the Boatman case, and the Estes case. That's going to help you get involved at the tactical level of what's happening to these veterans.

In 45 days, I want a report informing me and my staff that no fiduciary is receiving a larger commission that is authorized by law, and from the funds so authorized. By close of business today, VA should provide me and my staff the status on the updated fiduciary policy. If it is complete, provide the revised policy.

By March 9th, I want the VA's thoughts on removing the paragraph that we have that's in question on the Form 21-4703. On that same day, I want the VA's opinion in writing, on how they can incorporate aspects from other Federal fiduciary programs, including the Social Security Administration's program to make VA's fiduciary program better.

And I know you're writing, but we'll provide you these deliverables. On that same day, March 9th, I want to see those metrics that we talked about. I want to know what operational metrics are reviewed by the director, and by the operational team that will address these problems, and highlight them in a manner that resolution can be found.

Again, there are thousands of fiduciaries that are doing a great job. This is not a condemnation on those that are. But I submit to everyone in this room, when we have even one of our Nation's heroes, who have sacrificed life and limb to protect the freedoms that we enjoy as Americans, that's one too many. And if the system doesn't address a hundred percent of them, then it doesn't do a good enough job.

I look forward to working with Chairman Runyan, I'm sorry he had to leave, and the Disability Assistance and Memorial Affairs Subcommittee on approving VA's Fiduciary Program. I thank my colleague, Mr. McNerney for being here today.

With that, I ask unanimous consent that all Members have five legislative days to revise and extend their remarks, and include extraneous material.

Without objection, so ordered.

I want to thank all Members and witnesses for their participation in today's hearings and business meeting. This hearing is now adjourned.

[THE PREPARED STATEMENT OF LORI PERKIO APPEARS IN THE APPENDIX]

[THE PREPARED STATEMENT OF WOUNDED WARRIOR PROJECT APPEARS IN THE APPENDIX]

[Whereupon, at 12:45 p.m. the Subcommittee was adjourned.]

A P P E N D I X

Prepared Statement of Hon. Bill Johnson, Chairman

Good morning. This hearing will come to order.

I want to welcome everyone to today's hearing on the VA's Fiduciary Program.

I would like to ask unanimous consent of the Subcommittee that Chairman Runyan of the Disability Assistance and Memorial Affairs Subcommittee be allowed to join us today in our meeting.

Hearing no objection, so ordered.

His Subcommittee's Ranking Member, Congressman McNerney, is also a Member of this Subcommittee, and we welcome him in both capacities today.

We are here today to have a frank and honest discussion about the problems festering in the VA's Fiduciary Program. The VA's approximately 95,000 appointed fiduciaries manage over three billion dollars in payments made to more than 100,000 of our Nation's veterans and their dependents.

In the last several years, the VA has created and implemented its fiduciary hub program. This program aims to streamline the system and improve processing in fiduciary accountings, but I fear that these recent changes have only addressed a fraction of the problem.

This Subcommittee's investigation into the VA's Fiduciary Program revealed that fiduciaries who are doing the right thing are all too often finding it difficult to navigate the maze that makes up the Fiduciary Program. While numerous honorable fiduciaries serve our veterans, many bad actors exist in the system.

We found an instance where the VA arbitrarily removed a veteran's wife from her duties as his fiduciary after what the VA characterized as ten years of excellent service. She was replaced by a paid fiduciary. VA policy is that they prefer family members and friends to serve as fiduciaries. It is obvious to me that this policy is just lip service and that needs to change.

Our investigation also uncovered that the Fiduciary Program has been plagued by failures in oversight and unwillingness to listen to the veteran.

Last week, in a hearing before the Full Committee, VA Deputy Secretary Scott Gould stated that "the wrong way became the way we've always done it." This mindset seems to have permeated the VA's Fiduciary Program.

This past December, a VA fiduciary and a VA Field Examiner were convicted in Tennessee for embezzling almost \$900,000 from ten veterans' accounts which they oversaw. These felons used some of the stolen funds to pay their own cable and utility bills. Holding its fiduciaries accountable through proper oversight is just one way the VA can take modest steps to improve the system.

One of the VA's core values is responsible stewardship of the human and financial resources entrusted to it. The VA needs to work more efficiently and effectively to properly serve those veterans who have fiduciaries.

I have seen evidence of veterans, their friends and family repeatedly notifying the VA of fiduciary misfeasance. And time after time, their appeals have been ignored. This needs to stop. Identifying and correcting situations like these is certainly not rocket science.

The VA has testified in the past that they are working through the backlog of fiduciary claims. To successfully manage the Fiduciary Program, the VA must focus not only on those waiting to be assigned a fiduciary, but also on those veterans in the program already.

In our first panel, Mr. Dave McLenachen, Director of the VA's Pension and Fiduciary Service, and Miss (or Ms. If unsure) Diana Rubens, Associate Deputy Undersecretary for Field Operations at the VA will share their thoughts on the state of the Fiduciary Program.

As we will hear from our second panel, the VA is aware of the problems facing those in the fiduciary system. As much as the VA focuses on the positive steps they are taking in the Fiduciary Program, we are all aware of the other problems they

refuse to address. This hearing provides a positive step forward in addressing and resolving these issues.

I appreciate everyone's attendance at this hearing, and I now yield to Ranking Member Donnelly for an opening statement.

**Prepared Statement of Hon. Joe Donnelly,
Ranking Democratic Member**

This hearing provides us with an opportunity to learn of the many changes the VA has taken to improve this program since the Subcommittee on Disability and Memorial Assistance held a hearing last Congress on the VA Fiduciary Program. The VA assures us that it is taking solid steps to fix the problems and weaknesses in the Fiduciary Program; other witnesses will suggest that many problems remain. I want to be assured that the VA is improving the program and has a solid roadmap to follow as we move forward.

The VA Fiduciary Program, in place since 1926, is one of the most sensitive programs run by the VA, and one most in need of effective management and oversight. Not only must the needs of beneficiaries come first, but their assets must be protected from fraud and waste.

The VA currently oversees approximately 95,000 fiduciaries managing the financial affairs of more than 121,000 beneficiaries. In Fiscal Year 2011, the VA reports that the Veterans Benefits Administration made payments for compensation and pension benefits of approximately \$53.5 billion, while fiduciaries managed approximately \$171 million in VA benefits.

Since the 2010 hearing, VBA, acknowledging that Central Office oversight of its Fiduciary program lacked priority, announced in November, 2011, that they would consolidate Fiduciary operations from 56 Regional Office into six hubs in six Regional Offices. The VA informs us that the process will convert to a "paperless processing environment." These changes should hopefully increase the program's efficiency and accountability.

The VA also informs us that it is making progress in coming to grips with the many problems it faces with its Fiduciary Beneficiary System, one of the major flaws exposed during the 2010 hearing. I am interested to see where we are in this process, and hope to get a detailed timeline as to when the VA expects to bring forward a new electronic case management system.

I hope the VA, and our witnesses, can provide insight into the current staffing levels of the VA fiduciary Program, and whether we might need additional personnel. I also would like to explore the effectiveness of current training efforts and ways that this could be improved.

I am interested to hear that VA believes that it has fully addressed the recommendations made by the VA OIG and GAO. I hope we will have an in-depth discussion of where we have been and where we need to go.

The Fiduciary Program faces many challenges, and many problems in improving oversight. We must ensure that while we provide beneficiaries and their families with a meaningful say in the fiduciary process, we must make sure that the needs and interests of veterans come first.

I am pleased that the VA has taken steps to improve the Fiduciary Program, but I know this Subcommittee wants to make sure that these steps represent real progress in fixing these real problems.

Prepared Statement of Hon. Jon Runyan

Good morning. Thank you, Chairman Johnson, for the opportunity to participate in today's hearing.

As the Chairman for the Subcommittee on Disability Assistance and Memorial Affairs, I am greatly concerned by the current state of VA's fiduciary program. I look forward to working with the Subcommittee on Oversight and Investigation in an effort to best serve our Nation's disabled Veterans.

Improving VA's fiduciary program is essential, because it serves a very vulnerable segment of the Veteran population – Veterans who are no longer able to take care of themselves.

There are approximately 95,000 fiduciaries in the VA system, overseeing the accounts of approximately 120,000 Veterans. The total value of these accounts is in excess of \$3.3 billion. While this amount in the aggregate is clearly significant to the VA and the American tax payers, and for that reason alone would be deserving

of the VA's highest level stewardship and oversight; so too is every individual dollar of the utmost importance to the Veteran who has earned disability benefits through his or her service and sacrifice to our country. Mismanagement and negligent oversight therefore have no place in the administration of these benefits, especially when dealing with those least able to manage their own affairs.

We are here today to hold VA accountable for its inability to properly serve these Veterans who are most in need of VA's assistance. When VA fails to provide this assistance, many Veterans experience extreme financial hardship.

Currently, there is evidence of fiduciaries in the VA system embezzling funds; being non-responsive to Veterans' needs; and being over-compensated for the duties performed. This is simply unacceptable.

The issues in the VA fiduciary system are further complicated by a backlog of initial fiduciary appointments. Although VA has stated that this backlog is due to its rigorous vetting process, there has also been evidence of VA's non-compliance with its own regulations in ensuring that it appoints responsible, trustworthy fiduciaries.

It is my hope that as a result of today's hearing, the process of fixing VA's flawed fiduciary system can begin. I would like to note that the majority of VA's regulations concerning fiduciary appointments are from 1975, and I would highly encourage VA to update these regulations of their own volition in an effort to provide better guidance throughout the fiduciary appointment process.

In closing, I again want to commend Chairman Johnson for calling today's hearing to focus on this specific situation dealing with fiduciaries and look forward to working with him as the Disability Assistance and Memorial Affairs Subcommittee continues its ongoing oversight of the broader fiduciary program.

Thank you.

Prepared Statement of Hon. Jerry McNerney

Thank you Mr. Chairman.

Today's hearing is intended to examine VA's Fiduciary program and assess how the VA can strengthen management controls and accountability to protect some of our most vulnerable citizens.

Since 1926 when Congress passed the World War Veterans Act, the VA has been providing oversight of its benefits paid to those beneficiaries who were incapable of handling their own affairs due to injury, disease, or infirmities of age. Today, according to VA, the VA Fiduciary Program manages approximately \$171 million in VA benefits for more than 121,000 beneficiaries.

In April 2010, the DAMA Subcommittee conducted an oversight hearing examining the VA Fiduciary Program based on then-recent reports from VA's Office of Inspector General and the GAO. These reports pointed to a number of deficiencies in VA's management controls and oversight, including insufficient staffing, training, and workload management. Additionally, both the VAOIG and GAO expressed serious concerns with the inadequacy of the Fiduciary Beneficiary System, VA's electronic fiduciary case management and tracking program.

As indicated in these reports, in the absence of adequate oversight and accountability, some fiduciaries have misused millions of dollars belonging to our veterans and their dependents.

In fact, from October 1998 to March 2010, the VA OIG's Office of Investigations reported that it conducted 315 fiduciary fraud investigations, resulting in 132 arrests and monetary recoveries of \$7.4 million in restitution, fines, penalties, and administrative judgments.

It should be noted that these abuses are hardly representative of all fiduciaries—they are the exception not the rule. In fact, on the other end of the spectrum, we heard during that hearing from VSOs and family members that caregivers and other relatives who serve as fiduciaries receive no training or support from VA. In fact, the witnesses seemed to indicate that in many instances, professional fiduciaries are not always subjected to as much VBA oversight as family member and caregiver fiduciaries. That even worse, during the audits by VA staff, these caregiver fiduciaries are treated with suspicion and mistrust. For example, the Wounded Warrior Project testified that VBA required a mother who served as a fiduciary for her mentally disabled veteran son to reimburse funds spent on toilet paper for the home.

I think this is a scenario of being pennywise and dollar foolish—of VA watching the pennies, while the dollars flow out of the window. We must insist that VA strike a better balance while protecting our vulnerable beneficiaries.

Finally, I understand that since the DAMA 2010 hearing, VA has made a number of internal management and structural changes within its Fiduciary Program. I look forward to hearing of your progress. I also want to know in particular what VA's plans are in light of the recent *Freeman v. Shinseki* decision. I look forward to the insight that all of our witnesses may provide today and thank them for being here.

Mr. Chairman, our most vulnerable VA beneficiaries deserve a 21st Century system that reflects the service and sacrifice they gave to our Nation, VA must do better.

With that Mr. Chairman, I yield back.

Prepared Statement of David R. McLenachen

Mr. Chairman and Members of the Subcommittee, thank you for the opportunity to review the Department of Veterans Affairs (VA) fiduciary program. I am accompanied by Ms. Diana Rubens, Deputy Under Secretary for Field Operations.

The fiduciary program appoints and oversees fiduciaries for Veterans and other beneficiaries who, because of injury, disease, or the infirmities of age, are unable to manage their financial affairs. VA currently oversees approximately 95,000 fiduciaries who provide services to more than 121,000 beneficiaries with cumulative VA estates exceeding \$3.3 billion.

Secretary Shinseki has consistently noted the need for heightened awareness with regard to many of the Department's most vulnerable beneficiaries, who rely on the services of VA-appointed fiduciaries to properly manage their VA benefits. Last year, he authorized a reorganization within the Veterans Benefits Administration (VBA) to establish a new office to more directly control and implement the Department's fiduciary program. In April 2011, VBA established the Pension and Fiduciary Service, led by a VA Senior Executive, to focus on the unique needs of these beneficiaries, more than 50 percent of whom are in VA's needs-based pension program, and to strengthen oversight of VA-appointed fiduciaries. This reorganization has allowed VBA to increase the staff responsible for fiduciary policy and procedures, and to establish a separate staff responsible for all aspects of fiduciary quality, training, and site visits.

Oversight and Audits

Even prior to the establishment of the Pension and Fiduciary Service, VA was working hard to implement fiduciary program improvements, and continues to do so. These efforts included revising the site survey protocol to ensure proper oversight of field fiduciary activities, providing on-site training to fiduciary activities, deploying special assistance teams to fiduciary activities, and clarifying and strengthening policies and procedures to enhance service delivery and protection of beneficiaries.

In addition to these internal initiatives, VA has recently had the opportunity to participate in several audits of the fiduciary program conducted by the Government Accountability Office (GAO) and the VA Office of Inspector General (OIG). The findings from these audits confirmed that VA is making improvements in its fiduciary program. GAO recommended that VA conduct additional periodic reviews of fiduciaries; and analyze the results of its fiduciary hub pilot project. OIG recommended that VA: require fiduciaries to report additional information regarding their expenditures; include fiduciary information in VBA's Annual Benefits Report; develop a staffing model for its fiduciary personnel; develop an internet site for fiduciaries, take measures to better protect retroactive benefits paid and enhance its procedures for providing oversight of fiduciaries to prevent the misuse of benefits. Both organizations recommended that VA conduct an operational analysis of its electronic data management system for the fiduciary program and develop standardized training for its fiduciary personnel. VA took these recommendations very seriously and worked hard to fully address each of the recommendations with detailed action plans. Every recommendation made was acted upon and all have been closed.

Fiduciary Hub Consolidation

To improve operational efficiencies, VA consolidated the management of fiduciary activities at 14 of its regional offices into a paperless processing environment at the Western Area Fiduciary Hub in Salt Lake City, Utah. Under this hub concept, fiduciary managers deploy their field examination resources according to the location of beneficiaries within the hub and without regard to state borders or VA regional office jurisdiction, while centralizing all other fiduciary functions at the hub site. An analysis of the pilot's strengths, weaknesses, and lessons learned found that the reorganization improved the timeliness of initial fiduciary appointments by 36 percent

and quality by 13 percent. It also found that field examiners traveled fewer miles per field examination, a 6 percent improvement, and reduced the average days to complete an initial appointment by 26 days. Based upon these significant improvements, VA is planning the deployment of the fiduciary hub concept nationwide at five additional sites.

In connection with the consolidation, VA conducted an in-depth staffing analysis of its fiduciary activities. This analysis examined the location of our beneficiaries and field examiners to develop a staffing model for full hub consolidation. Under the resulting model, VA will hire 58 additional field examiners nationwide and deploy them based upon the needs of the current beneficiary population to further improve efficiency and client services.

Training

In 2011, VA further improved its internal training programs and delivery of fiduciary-related information to external stakeholders. First, VA developed and piloted centralized training for the program's Legal Instrument Examiners (LIEs), who review fiduciary accountings, investigate misuse of benefits, and maintain follow-up communications with beneficiaries. Under the pilot, VA trained more than 100 new LIEs to full production standards, following which they were deployed to their assigned fiduciary activities in the field. VA plans to expand the delivery of mandatory, centralized training for its fiduciary personnel as part of its continuing efforts to improve client services. Second, VA implemented a training program consisting of monthly telephone calls with key fiduciary personnel to ensure consistent, nationwide dissemination of information regarding policies, procedures, and best practices. Third, VA deployed its first-ever internet site specifically for fiduciaries and beneficiaries in the fiduciary program. This innovative internet site provides valuable information regarding fiduciary duties and responsibilities, and other useful tools such as references and related links.

Prevention of Misuse of Funds

VA has implemented procedures to enhance its prevention and identification of misuse of beneficiary funds. Effective September 1, 2009, fiduciaries must submit more specific financial documents, including bank records, with their annual accountings. Collection of this additional information during the accounting process allows VA to verify reported expenditures and identify potential misuse of funds for further investigation. This requirement also serves as a fraud deterrent for fiduciaries. Additionally, under procedures implemented in April 2010, VA Central Office Fiduciary Staff personnel review the records regarding every misuse determination to ensure that VA has identified and properly responded to potential misuse of benefits by fiduciaries. VA's efforts to prevent fiduciary misuse of beneficiary funds have been successful. These efforts resulted in a misuse rate of less than one-tenth of one-percent in fiscal year 2011.

Fiduciary Program Outreach

VA continues to conduct extensive outreach regarding its fiduciary program. Over the past three years, VA has participated in meetings hosted by the National Guardianship Association, the National Association of Elder Law Attorneys, the National College of Probate Judges, and the American Association of Retired Persons. These outreach efforts include educational presentations on VA's program, participating in conference discussions, and recruitment of qualified fiduciaries for VA beneficiaries at industry practice group meetings. In January 2011, VA organized and led a multi-agency roundtable that included representatives from VA, the Social Security Administration, the Office of Personnel Management, and the Defense Finance and Accounting Service. The purpose of these roundtable discussions was to identify Government-wide best practices, establish collaborative relationships, and develop methods to better serve beneficiaries.

Challenges

Despite VA's successful implementation of these improvements, challenges remain. VA is working to improve its electronic case management system, the Fiduciary Beneficiary System, as it poses significant limitations. VA created a comprehensive business requirements document and has a workgroup tasked to design and deploy a new case management system that will improve efficiency and fiduciary oversight capabilities.

In April 2011, the U.S. Court of Appeals for Veterans Claims issued an opinion in *Freeman v. Shinseki*, in which it concluded that a beneficiary may appeal VA's appointment of a fiduciary to the Board of Veterans' Appeals and the court under current law. This decision may significantly impact VA's fiduciary program workload, which conducts more than 30,000 initial fiduciary appointments annually.

VA has initiated a complete review and revision of all regulations and procedure manuals pertaining to fiduciary matters. Among other things, the revised regulations will address appointment procedures and appeals, beneficiary rights, fiduciary qualifications, and fiduciary responsibilities. Upon completion of the regulation rewrite, VA will revise its manual guidance consistent with the new regulations.

Another challenge is the increasing backlog of initial appointment and follow-up visit field examinations. In part, this backlog is attributable to the almost 10 percent increase in VA's fiduciary program population from 2010 to 2011. VA hopes to implement the efficiencies employed by the Western Area Fiduciary Hub nationwide to continue the successes shown in timeliness and quality.

Consistency is key to improved client service. In addition to the training provided to new legal instruments examiners in 2011, all fiduciary personnel should be trained in a centralized environment using a standardized curriculum. VA is designing a curriculum for the fiduciary program and needs to explore methods for efficient delivery to its field personnel.

Conclusion

In conclusion, I want to affirm VA's commitment to serve and protect our most vulnerable population of Veterans and other beneficiaries. VA has significantly improved the fiduciary program to ensure that America's Veterans and their survivors receive the benefits and services they have earned. The interest in our program expressed by GAO, OIG, and this committee reflects the importance of this effort. VA is committed to taking all steps necessary to ensure we fulfill our obligation to protect the beneficiaries in this program.

Mr. Chairman, this concludes my prepared remarks. I would be happy to address any questions or comments regarding my testimony here today.

Prepared Statement of Douglas J. Rosinski, Esq.

Mr. Chairman, Ranking Member, and Distinguished Members of the Subcommittee:

Thank you for the opportunity to represent the views of veterans and their families who have had their lives upended by the so-called VA "fiduciary" program. The indignities that our most vulnerable veterans suffer under this flawed, if not failed, program is a national disgrace. Yet, VA officials allow the same harm to occur over and over again while opposing every effort by veterans to even learn who has *their* money. VA has erected innumerable barriers for veterans seeking benefits earned defending this country. But, with the stroke of a pen, VA can take back every dollar paid in the past and every dollar to be paid in the future. *It happens every day.* I sincerely believe that you will not find an area more worthy of your attention and fundamental reform than this out-of-control VA program.

I am an attorney based in Columbia, South Carolina, and have been practicing veterans law for over a decade. I have had the honor and pleasure of representing dozens of veterans of conflicts from World War II to the present and those affected by the infamous "lost laptop" in 2006. The views expressed in this statement are based on my personal knowledge of the VA "fiduciary" program's abuses in cases from California, Indiana, Maine, Tennessee, and several in Texas.

Members of Congress and all citizens should understand how the VA "fiduciary" program *really* operates, not just how VA officials claim it works.

Today, elderly veterans will do without prescribed medicine, have the power to their homes threatened to be turned off, and be evicted, despite having thousands of dollars in the bank because a VA-appointed "fiduciary" would not provide those veterans with a single dollar more than VA approved for payment months or years ago.

Today, VA will ignore the expressed wishes of a veteran and the pleadings of his or her spouse, children, and caregivers and appoint a "fiduciary" to control the veteran's finances, a "fiduciary" who has never met or spoken with the veteran or any family member.

Today, VA will demand physical access to an elderly veteran, the veteran's home, and the entire family's financial information.

Today, VA will ignore a valid Power of Attorney and disregard a State Court Order of Guardianship to assert authority over a veteran's finances.

Today, VA will determine that a wife of more than 60 years with her full mental faculties is not qualified to make financial decisions for her veteran husband.

Today, VA will stop the direct deposit of the monthly benefits that a veteran relies upon for daily living expenses and authorize a person who has never spoken with, much less met, the veteran to seize all of the veteran's bank accounts.

Today, VA will decide a veteran's financial needs for the next three years based on a single hour-long interrogation by a VA "field examiner" who possesses no discernable expertise in finance, social work, mental health, or any other discipline reasonably viewed as pertaining to such a task.

Today, a VA-appointed "fiduciary" will sign a contract with VA that requires him or her to do only what VA tells him or her to do with a veteran's money.

Today, VA will instruct that "fiduciary" to avoid meeting or even speaking with "their" veteran and to refuse to provide the veteran or family with any information about the veteran's money.

Today, VA will withhold a 90 year old veteran's benefits payments because his family refused to let VA invade his home or rifle through his family's financial information.

Sadly, *every one* of the outrages described above has occurred in one or more of the cases in which I am involved – some more than once. Indeed, VA-appointed "fiduciaries" have – under oath – confirmed that these examples are in many ways typical of how the VA "fiduciary" program operates.

Mr. Chairman, VA's acts would be outrageous if they involved VA money. But, worse still they involve *veterans' money* that VA has already paid. Let me be very clear, the VA fiduciary program runs on veterans' money – well over \$3 billion of it. VA takes a *veteran's money* and gives it to a stranger who does not know and does not want to know the veteran. VA takes the *veteran's money* and pays that stranger a fee that can be over \$100 each month, many times for writing a single check of an unvarying amount. VA takes the *veteran's money* and pays \$1,000 or more for surety bonds to protect against the VA-appointed "fiduciary" steals the *veteran's money*. VA takes the *veteran's money* and pays legal and other fees to enable the stranger to assert control over other aspects of the veteran's life, including speaking for the veteran in VA benefits claims and appeals.

Ironically, VA regulations require strict due process protections for a veteran facing a proposal to merely *reduce* his or her monthly benefit payments. These protections include the right to a hearing, to present evidence, and to appeal the decision. Importantly, VA cannot implement a reduction in payments until the appeal process is complete. Yet, VA asserts that it can take every penny ever paid to a veteran and all future benefits payments by simply announcing the appointment of a "fiduciary."

Until April 2011, VA did not even recognize a right to appeal a fiduciary appointment. Now, despite vigorous VA opposition, the Veterans Court has held that VA must allow a veteran to appeal a fiduciary appointment. But *VA can still take and hold a veterans entire life savings while the VA "hamster wheel" churns on the appeal for years*. The Subcommittee should note that since the April 2011 *Freeman* decision, only a single Statement of the Case (the first step in an appeal) has been issued in any of the fiduciary cases of which I have knowledge. With an appeal cycle to the Board of Veterans' Appeals and the Veterans Court now taking 5 to 8 years, VA can take an elderly veteran's money with practical impunity.

Reform of the so-called VA "fiduciary" program will be difficult. The program has run unchecked so long that it is not recognizable as the aid to our most vulnerable veterans intended by Congress. Indeed, my personal conclusion is that defense of the program by VA officials is now a reflex action unmoored to any concern for fairness or effectiveness, as illustrated by the following observations.

First, the highest levels of VA management and legal counsel are personally aware of the facts in the cases in which I am involved, but they have uniformly refused to take any action in any case. I know this because I have participated in email exchanges and conference calls with senior VA officials where these and other clear examples of program overreaching. The officials either subsequently did not respond, terminated the exchange, or explicitly stated that they would not take any action.

Further casting doubt on VA's interest in reforming the fiduciary program is that VA has vigorously opposed – and continues to vigorously oppose – every legal action to assert a veteran's basic rights in the face of VA fiduciary program abuses. VA has fought every petition for relief to the Veterans Court, every federal district court lawsuit, and every state court action seeking review of VA fiduciary program abuses of which I am aware.

In a Texas state court action which may go to trial next week, VA even went so far as to attempt to intervene in a state case in which it was not a party and tried to remove the case to federal court the day before an expected adverse ruling. The federal district court remanded the case characterizing VA's arguments as "unsup-

ported” and “absurd.” However, the several month delay caused by VA’s baseless interference did mean that the veteran would not have his day in court: he died three weeks ago. His cause is being taken up by the son that VA accused in an internal email of trying to steal his father’s money.

Just two weeks ago in a case brought in Indiana state court, the defendant VA-appointed fiduciary (a bank) similarly removed that case to federal district court. The affidavit of defense counsel stated that the grounds for removal were “discovered” by the him “*through discussions with the Indianapolis regional counsel for the Department of Veterans Affairs.*” Only the VA General Counsel can explain why VA attorneys are helping delay an elderly veteran’s lawsuit by providing a legal strategy *adverse to a veteran* and for which VA was scolded by a federal judge less than a year earlier.

These are not the only times that VA has played fast and loose in court actions involving challenges to its authority to take a veteran’s money under the guise of appointing a “fiduciary.” As detailed in the filings in *Freeman v. Shinseki*, 24 Vet. App. 404 (2011), VA will argue whatever legal position is required to have a veteran’s case thrown out of a particular court. In federal district court, VA argues that only the Veterans Court has jurisdiction. In the Veterans Court, VA argues that the Veterans Court does *not* have jurisdiction. And, as described above, in state court VA argues that only federal district court can hear a fiduciary challenge.

Indeed, in the Texas veteran’s case discussed above, VA was caught unabashedly arguing in district court that the Veterans Court *had* exclusive jurisdiction and, at the *same time* and against the *same veteran*, arguing in the Veterans Court that the Veterans Court *did not have* jurisdiction. When the Veterans Court was alerted to the situation, VA filed an amended argument in the district court removing the conflicting position, which was described as an “error.” Again, only the VA General Counsel can explain a VA legal position that is based on protecting the fiduciary program *from* veterans asserting their rights.

Whatever else is true, Congress did not establish the VA fiduciary program to operate the way it does today. Indeed, Congress could not have done so because not even Congress can authorize a federal agency to take a citizen’s money without providing for a constitutional minimum of due process. A VA employee authorizing a stranger to surreptitiously seize a veteran’s bank accounts and benefit payments is not legal process of any kind, it is an unconstitutional taking.

To the extent that VA asserts that it has legal bases for its fiduciary program actions, it refuses to provide them. Co-counsel and I have repeatedly asked for the legal bases for VA actions in each and every one of our fiduciary cases. Each and every time the response has been silence. The only basis that I can discern from the entirety of my interactions with VA on this issue is that VA “has always done it this way.” Perhaps VA will be more responsive to the Subcommittee regarding the following issues:

- What is the legal basis for VA to ignore a valid Power of Attorney appointing a specific individual of the veteran’s choice as attorney-in-fact, fiduciary, or guardian of a veteran’s finances?
- What is the legal basis for VA to ignore a state court Order of Guardianship and to appoint a guardian in direct conflict with such an Order?
- What is the basis for directing financial institutions to provide a veteran’s financial accounts under the guise of a “fiduciary” relationship, when the purported “fiduciary” owes a contractual duty to VA and nothing to the veteran-beneficiary?
- What is the legal basis for denying a veteran-beneficiary access to basic information regarding the VA-appointed “fiduciary” and periodic information regarding the amount and location of the funds held in trust?
- Why is there not an actual and direct conflict of interest between a VA-appointed “fiduciary” with a contractual duty to do only what VA authorizes or face financial repercussions and the “highest duty of loyalty” a true fiduciary owes to a beneficiary?
- What conflicts, if any exist, between the duties and obligations of a VA-appointed “fiduciary” and the common law and state law fiduciary duties of loyalty, transparency, fair dealing, accounting, and similar duties of non-VA fiduciaries controlling beneficiary funds?
- What is the legal basis for the position that Congress intended that statutes governing the VA fiduciary program preempt state law or otherwise shield VA-appointed “fiduciaries” from compliance with state laws governing similarly empowered fiduciaries in the same state?

Mr. Chairman, every person to whom I have spoken who knows Secretary Shinseki, including a contemporary who was awarded the Medal of Honor during

service in Vietnam, has told me that the Secretary is one of the most honorable and conscientious leaders ever to serve our country. Yet his agency, his command, not only tolerates this flawed fiduciary program, but attacks veterans who try to escape the program's clutches. I can only conclude that for whatever reason, the VA officials with whom I have interacted have not told the Secretary what is happening on his watch.

After this hearing, the Secretary will no longer be in the dark. If, as his officials claim, the above examples are merely "isolated" cases, it should be a straightforward matter to correct the abuses in these few cases without significant effort or delay. I look forward to the Secretary's immediate and personal leadership in correcting this national disgrace.

Recommendations

Finally, I offer a few suggestions for actions that the Secretary can immediately implement that will go a long way to repairing the damage done by the failed fiduciary program.

First, the Secretary can and should immediately order that VA take no action to seize a veteran's finances or authorize a VA-appointed fiduciary to do so until any appeal of the decision to appoint a fiduciary is fully adjudicated and becomes final.

Second, the Secretary can and should immediately order that appeals of fiduciary matters be conducted under the same due process procedures as a reduction or severance of benefits, which provide for notice, an opportunity to present evidence and to be heard, and allow an appeal to the Veterans Court.

Third, the Secretary can and should order that every VA-appointed fiduciary recognize and comply with the duties of persons exercising similar fiduciary powers in the state in which they are located. As a minimum, the Secretary should order VA-appointed fiduciaries to provide fundamental financial information to beneficiaries on a routine basis and when reasonably requested and to provide complete explanations for the denial of any request for funds from the beneficiary.

Fourth, the Secretary can and should order revision of the documents used to appoint VA fiduciaries to make clear that fiduciaries have the independent authority – and the primary duty – to act in the best interest of the veteran, whether or not VA "approves" in advance.

Fifth, the Secretary can and should order that VA officials specifically state in writing the "reasons and bases" for appointment decisions and including how appointment of a VA fiduciary generally, and the selected fiduciary in particular, is in the best interests of veteran-beneficiary and provide that statement to the veteran-beneficiary and his or her legal representative.

I know of no reason why any of these actions require anything more than the Secretary's mandate for these changes become the "way VA does it" while grander goals and policy changes grind their way through the agency.

Thank you again for this opportunity to speak on behalf of our country's most vulnerable veterans and their families. I look forward to your questions and, hopefully, substantive changes in this failed program.

Curriculum Vitae

Douglas J. Rosinski earned a B.S., *with distinction*, in Physics & Astronomy from the University of Rochester in 1981 and a J.D., *cum laude*, from the University of South Carolina School of Law in 1997. He is admitted to practice law in the District of Columbia, Georgia, and South Carolina, numerous federal district and appellate courts, the United States Court of Appeals for Veterans Claims, and the United States Supreme Court. Mr. Rosinski is also accredited to represent veterans before the Department of Veterans Affairs.

Since 1997, Mr. Rosinski has concentrated his practice in administrative law and regulatory compliance. In 2000, he began litigating cases on behalf of veterans and their families before the Department of Veterans Affairs regional offices, the Board of Veterans' Appeals, the United States Court of Appeals for Veterans Claims, federal district court, the United States Court of Appeals for the Federal Circuit Court, and the United States Supreme Court. In 2006, Mr. Rosinski was co-lead counsel in a class action on behalf of veterans that obtained the largest reported settlement in a case for Privacy Act violations. Mr. Rosinski currently practices veterans law with his own firm in Columbia, South Carolina.

In addition to his veteran's practice, Mr. Rosinski has represented clients in licensing and enforcement actions before the Nuclear Regulatory Commission and Department of Energy on issues regarding federal regulations on the design, licensing, operation, and maintenance of a broad range of nuclear facilities.

Mr. Rosinski is a veteran of the United States Navy where he was a qualified submariner and nuclear engineering officer.

Disclosure Statement

Mr. Rosinski is appearing before the Subcommittee as a private citizen and has not received any federal grant or contract relevant to the subject matter of his testimony.

Executive Summary

It is a national disgrace that our most vulnerable veterans and their families suffer repeated indignities because of the flawed VA “fiduciary” program, under which VA impoverishes these veterans while claiming to protect their benefits. Despite professing concern, VA officials allow the same harms to occur over and over again while vigorously opposing every effort to learn who has taken the **veteran’s money**, how much of the **veteran’s money** has been taken, and where the **veteran’s money** is held. The program has run without effective oversight for so long that it is not recognizable as the aid to our most vulnerable veterans intended by Congress.

Reform of the flawed VA “fiduciary” program will be difficult for several reasons. First, the highest levels of VA management and legal counsel are personally aware of the facts in many cases of program overreaching, but they have refused to take any action in any case. Further, VA has long opposed – and continues to oppose – every attempt to assert a veteran’s rights in the face of VA fiduciary program abuses. Finally, VA has repeatedly refused to provide any legal basis for ignoring state laws governing fiduciary conduct and denying veterans other fundamental rights.

Whatever else is true, Congress did not establish the VA fiduciary program to operate the way it does today. Indeed, Congress could not have done so because not even Congress can authorize a federal agency to take a citizen’s money without providing a constitutional minimum of due process. Yet, the VA “fiduciary” program does this every day. A VA employee authorizing a stranger to surreptitiously seize a veteran’s bank accounts and benefits payments is not legal process, it is an unconstitutional taking.

There are at least five administrative actions that Secretary Shinseki can order **today** that would immediately require the VA fiduciary program to provide a modicum of due process, consider a veteran’s basic rights, and be accountable for its actions.

Prepared Statement of Katrina J. Eagle

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

Thank you for the opportunity to share my experiences and insight into the Fiduciary Program of the Department of Veterans Affairs (VA). I am a veterans law attorney in private practice; my clients are veterans and their family members whose claims for benefits and compensation have been denied by VA. I currently represent or am counsel to nine different veteran-beneficiaries who are challenging various aspects of the VA fiduciary process.

The watershed moment for purposes of this Congressional hearing was April 26, 2011, the day the U.S. Court of Appeals for Veterans Claims (“Veterans Court”) held that the appointment of a VA fiduciary is appealable to the Board of Veterans’ Appeals and to the Veterans Court thereafter. See *Freeman v. Shinseki* (24 Vet. App. 404). The Veterans Court’s holding was premised upon the basic legal tenet that any aspect of the VA’s “provision of benefits” is subject to judicial review. See 38 U.S.C. §§ 511(a), 5502. No longer are veterans’ fiduciary-related questions and disagreements discarded with a terse VA letter asserting that such issues are “within the sole discretion of the Secretary.”

But, until the Veterans Court allowed fiduciary issues to be challenged, the VA Fiduciary Program operated with completely unfettered authority, in “splendid isolation.” The result of this decades-long unaccountability is now coming to light as veteran-beneficiaries and their family members report their problems and demand answers.

Of course, VA leadership will tout the issuance of two VA fast letters and the reorganization of fiduciary personnel into six VA Fiduciary Hubs as proof that they are fixing the system and improving the program. Meanwhile, veterans continue to be unable to talk directly to their VA-appointed fiduciary, to receive additional funds on an emergent or timely basis, and unable to obtain basic account information regarding their VA funds. In short, despite claiming that veteran-beneficiaries’ best interests are central to VA’s efforts, the reality is quite the opposite. And veterans are suffering as a result.

For example, according to VA Pension and Fiduciary Service leadership, current VA policy is that any time a veteran is determined to be incompetent to manage his VA benefits, a fiduciary *must* be appointed. Always. This VA policy, however, directly conflicts with VA law, which states unambiguously that a fiduciary is *not* required in every case. In fact, the relevant VA statute lists the veteran-beneficiary as the first choice—among several—to whom VA can pay the veteran's monthly benefits. The last choice is a VA-appointed paid fiduciary. According to 38 U.S.C. section 5502, "Where it appears to the Secretary that the interest of the beneficiary would be served thereby, payment of benefits under any law administered by the Secretary may be made directly to the beneficiary or to a relative or some other fiduciary for the use and benefit of the beneficiary." *May*. Not *must*.

The VA then compounds its erroneous interpretation of VA law by appointing a paid fiduciary and re-routing the veteran's VA monthly payments to an undisclosed bank account to which only the fiduciary has access and control—all without the veteran's consent, approval, or even knowledge (under the guise that he or she is incompetent). Yes, thanks to Freeman, the veteran can now challenge the appointment by filing a Notice of Disagreement. But, while the appeal is pending and until the issue is resolved, a stranger—known only to VA—has complete control of the veteran's monthly benefits. Further, according to VA's own statistics, it takes the Board of Veterans' Appeals an average of 886 days to process an appeal. Thus, even under the best possible outcome, for at least 2.5 years, a veteran has absolutely no access to his or her own VA funds – and many more years if the appeal has to go to the Veterans Court or the Federal Circuit.

Sadly—but not surprisingly—VA has not tried to proactively resolve any of the veterans' fiduciary-related complaints and concerns I have personally brought to their attention since April 2011. No one at the local VA Regional Office level, nor anyone at VA headquarters. Indeed, only one case has been settled satisfactorily, and that was primarily due to adverse media attention. Sadder still is that in all nine of these cases, VA fiduciary management has defended its staff and the VA-appointed fiduciary (who is paid a monthly commission from the veteran's VA funds), regardless of the merits of the veterans' complaints.

In fact, the adult daughter of an elderly, World War II veteran in Texas has been explicitly rejected as a possible fiduciary for her father because she dared to make legitimate complaints – still unanswered by VA—regarding her father's VA-appointed paid fiduciary's accountings. Indeed, internal VA memos show that VA itself had concerns with the same fiduciary during the same period. The fiduciary remains in place; the daughter was disqualified from handling her father's finances.

VA officials will assert that the role of VA-appointed fiduciaries is to manage the veteran's VA funds, a seemingly simple and straight-forward duty. VA leadership will also claim that these paid fiduciaries act independently from the VA. But the reality is that the fiduciary is required to sign a contract that explicitly states that he or she will *never* release any funds to the veteran without VA's pre-approval. VA-appointed individuals are "fiduciaries" in name only – they are actually micro-managed agents of VA. As a result, fiduciaries have refused to release my clients' own funds to them for heart-ailment medication, travel expenses for a family funeral, mid-summer air conditioner repairs—and then only did so under threat of court intervention.

Veterans are suffering as a result of other VA Fiduciary Program policies as well. Typically, as part of appointing a fiduciary, a VA Field Examiner visits the veteran's home and demands to see all bills, expenditures, sources of income and revenue—including income from Social Security disability, military retirement, and spousal income. A monthly budget is then created and strictly enforced. Curiously, VA field examiners instruct veterans to expend all other sources of income before VA funds. VA-appointed fiduciaries are then directed to "save" large percentages of the monthly VA benefits – supposedly for emergencies – but which are rarely approved by VA management for any use. As a result, beneficiaries are left to scrape by on barebones VA-determined "budgets" while accumulating tens of thousands of dollars in untouchable bank accounts. Families are often forced to provide monetary assistance to these veterans, depleting their savings while VA benefits are unused. VA has yet to explain why a 90-year-old veteran needs to "save" 20% or 30% of his monthly payments for "future needs" when he cannot afford prescribed medicines and already has over \$100,000.00 in his name.

The manner in which VA fiduciary personnel treat family members who volunteer to be the veteran's fiduciary is abhorrent and disturbing too. Adult children of World War II veterans have been depicted as trying to "free ride" off of their father's VA benefits, as are spouses of Vietnam-era veterans. For example:

- After ten years of “excellent” account reports, a VA Field Examiner in Texas made a personal home visit and summarily removed the spouse-payee of one of my clients because of supposed accounting discrepancies. That very same day, he appointed a paid fiduciary and stopped the veteran’s direct-deposited monthly VA funds. The Waco Regional Office then waited another ten days before sending the veteran a letter informing him of their actions.
- In Indiana, a World War II veteran’s adult daughter, who serves as his caregiver, Court-appointed Guardian, and Power-of-Attorney, was removed for incorrect account reports and accused of mismanaging the veteran’s funds because she used them to take him to a world-renowned dementia-treatment center in Arizona. VA then appointed a bank to oversee his VA funds, which routinely pays his monthly bills late or not at all, creating additional late fees and threats of utility shut-offs.
- In Maine, VA awarded a World War II veteran service-connected benefits in January 2011, but determined he was incompetent to manage his VA funds. His daughter, already his Court-appointed Durable Financial Power-of-Attorney, volunteered to act as his fiduciary. But once she learned that VA representatives required documentation of all of her father’s financial affairs to establish a monthly budget, she refused the home visit and requested an explanation for why her father must be appointed a fiduciary in the first place. VA responded by appointing a total stranger to open an undisclosed bank account and oversee the veteran’s VA funds. The veteran has yet to enjoy any of his awarded VA benefits.

My first-hand experience with these fiduciary cases makes clear that reforms in the VA Fiduciary Program are desperately needed. One simple suggestion is for paid fiduciaries to provide monthly bank statements to their veteran-beneficiary. Even incompetent veterans have every right to know basic account information regarding their money. Monthly bank statements would also allow veterans or family members to voice timely concerns, and thereby possibly prevent years-long fraud from being committed, as recently discovered by VA, IRS, and DOJ investigators in Texas.

Another suggestion is for VA fiduciary personnel, from top management to local Regional Office staff, to reform their mindset regarding the approximately 112,000 veteran-beneficiaries in their program. Incompetency is not synonymous with idiocy. Yet, all too often these veterans and their family members are totally ignored or treated with sub-standard professional etiquette. VA must also stop viewing the veteran’s VA funds as if it still the agency’s, stop hoarding it under the guise of “saving” it for emergencies, and allow paid fiduciaries the independence to make decisions that are truly in the veteran’s best interests.

On behalf of the veterans who have suffered as a result of VA’s flawed and ill-managed Fiduciary Program, I applaud this Subcommittee for its investigation and call for reforms. While many other issues deserve your attention, please remain diligent in your demands for substantive and timely changes in this program. Especially in these financially difficult times, these veterans deserve more information about and better access to their well-earned VA benefits.

Executive Summary

Congress created the Department of Veterans Affairs’ (VA) Fiduciary Program to provide assistance to veterans who are deemed incompetent to manage their own VA monthly benefits. The individual providing the assistance is oftentimes a VA-appointed fiduciary who is paid a commission fee from the veteran’s VA funds. In theory, the fiduciary is an independent third party who serves the veteran and ensures his day-to-day financial needs are met. In reality, the fiduciary is contractually obligated to obtain approval from VA Fiduciary personnel for every expenditure not previously budgeted.

Veterans are suffering because of VA’s strict control over fiduciaries. Requests for money needed for veterans’ basic needs are being ignored or denied, forcing veterans and their families to endure severe financial hardship. Despite the recent change in law that now allows challenges to the fiduciary appointment process, VA management continues to ignore veterans’ basic due process rights and state court-appointed Durable Powers of Attorney. Contrary to the veterans’ best interests, abuses by fiduciary personnel and VA-appointed fiduciaries are rampant.

Reforms are needed so that fiduciaries actually serve their veteran-beneficiaries and comply with all fiduciary-related duties. In addition, with effective reforms, veterans will be provided basic account information regarding his own VA funds. Finally, with this Committee’s diligent oversight, VA’s Fiduciary Program personnel will explain how and why it chooses a particular paid fiduciary over the veteran himself, a relative, or another individual designated by the veteran.

Prepared Statement of Pam Estes

Chairman Johnson, Ranking Member Donnelly, and Members of the Subcommittee:

Thank you for inviting me to testify on VA's Fiduciary Program, and for holding this hearing.

My name is Pam Estes. My life and my family's life changed overnight in December 2005 when my son Jason sustained multiple severe injuries—including severe traumatic brain injury, multiple leg fractures, a lower leg amputation, and second and third degree burns over 60% of his body—as a result of an IED blast in Iraq. At the time of his injury Jason was only 19 years old. Since then, my husband Mike and I have been caregivers for Jason. I was appointed to serve as a fiduciary in 2007 as he was not able to manage his financial affairs.

As both a fiduciary for my son and a caregiver, I have had extensive experience in working with the Department of Veterans Affairs. In fact, I served for two years as a Member of a VA Advisory Committee on OEF/OIF Veterans and Families established by former Secretary of Veterans Affairs Jim Nicholson. As a result, I have a good understanding of the Department and its programs. But my experience of dealing with the Veterans Benefits Administration (VBA), as it relates to Jason's VA compensation, contrasts sharply with the experience of working with the Veterans Health Administration (VHA), as it relates to my son's care and to the administration of the VA Caregiver-assistance Program established by Congress in Public Law 111-163. While I have had very positive experiences with VHA, particularly in coordinating effectively with its case-managers surrounding Jason's care, my experiences as a fiduciary in meeting – and even understanding—VBA's requirements have been disturbing.

I certainly understand that VBA has an important responsibility as it relates to safeguarding the benefits of veterans who are unable to manage their own affairs. While its Fiduciary Program unquestionably has an important mission, my own experience and that of other caregivers of wounded warriors lead me to question how effectively the program is managed.

Among the frustrations I have encountered in serving as a fiduciary has been the lack of information as to precisely what VBA needed and expected, and the “mixed signals” it has sent. Despite a lack of guidance, I maintained detailed documentation of expenditures for Jason, consistent with my background in accounting. But I was stunned in 2008 when, despite the lack of detailed VBA instructions, I received a letter from the VA Regional Office in Baltimore which cited my “failure to submit your timely accounting” as “constituting a breach of your fiduciary duty,” and threatened to remove me as a fiduciary. I found it extremely offensive to be painted as irresponsible when we'd been working so hard to do what's best for Jason, including saving much of his money for the future when we're not here to care for him. Following up on that letter, I ultimately met with a VA field auditor in September 2008 and explained that I had never received instructions about requirements for annual reporting, or applicable forms; I was relieved that that official accepted my detailed documentation and advised me that no further action was needed. Yet less than a year later I received another letter from a VA Regional Office official stating that I was delinquent, and this time directing me to submit on a VA form *within 14 days* an accounting of all expenditures for Jason going *back to 2007*. *This letter again threatened that I risked being removed as a fiduciary.* The VARO official's letter also responded to an earlier letter of mine explaining that I had never received instructions on HOW to file annual accountings to VBA, and stated:

“In an ideal world, each year the computer would print you a letter and we would send you the letter and blank forms prior to your accounting date. It is supposed to work that way, but in real life doesn't always.”

VBA's “14-day reporting/or-else” directive prompted us to contact Wounded Warrior Project, which brought our situation to the attention of VBA Central Office officials and requested a meeting. My husband and I subsequently met with these officials, who were deeply apologetic. The meeting was instrumental in resolving the immediate problem, and we assumed, accordingly, that we would encounter no future difficulties. We were mistaken!

For the 2011 accounting period, I received a message from a supervisory official at the Baltimore VARO indicating that I was subject to a field audit this year. After back and forth messages, the visit had still not been scheduled. Fearing another de-

linquency, I submitted my annual accounting on December 5, 2011, and further sought to clarify VA policy regarding certain charges to be entered on that accounting form. In follow-up to the letter, I called and left messages, but received no response. On January 9th, however, I was shocked to receive a letter stating that I was delinquent in submitting the required accounting and threatening to remove me as Jason's fiduciary if I did not comply within 30 days.

From the perspective of a mother of a very severely wounded warrior, VBA communications like this – suggesting that with the stroke of a pen I could be deemed “unqualified” and lose the right to manage my son's finances—are terribly stressful. Despite my being a loving caregiver, this program operates in a manner that leaves me feeling as though something threatening is always hanging over my head. Given that that's been my experience, imagine what this process might be like for a young spouse without any background in recordkeeping let alone many years working in accounting! I understand the need for methodical recordkeeping and reporting in the interest of documenting appropriate financial management of Jason's compensation. But I do not understand an agency that is so quick to threaten, so unresponsive to questions, so much of a “black hole.” Nor do I understand why VBA cannot better align its reporting requirements with the much less detailed and less burdensome level of reporting used by the Social Security Administration.

Some two and a half years ago, my husband Mike attended a Caregiver Summit here in Washington sponsored by Wounded Warrior Project. One of the most common and deeply felt concerns expressed by the caregiver-participants was with the VA Fiduciary Program, which many participants described in some detail as confusing, demeaning, highly intrusive and often unreasonable in disallowing expenditures. The then-Director of VA's Compensation and Pension Service attended a session of the conference and, on hearing a presentation on these problems, promised Fiduciary Program reforms. It is not apparent to me that such reforms have taken place, or, if any steps were taken, that they have really taken hold.

On behalf of the many other caregivers who, as fiduciaries for their loved ones, have had experiences like mine, I hope this morning's hearing can help achieve such changes.

Prepared Statement of Rick Weidman

Mr. Chairman, thank you for the opportunity to present views here today. I appear on behalf of Vietnam Veterans of America (VVA), where I serve on the National staff as Executive Director for Policy & Government Affairs.

Thank you for the opportunity to appear here today to share our concerns and thoughts regarding concerns as to how the Veterans Benefits Administration (VBA) is managing the Fiduciary program. Even more importantly, thank you for holding this hearing, which has spurred VBA to actually take remedial steps they pledged to take six years ago and two years ago. This program is designed to protect some of our most vulnerable veterans. Unfortunately it appears that the program as currently operated falls far short of accomplishing that goal.

Perhaps it would be useful to note that it is our belief that VBA is often too quick to place veterans into the fiduciary program. A more extensive use of automatic bill payments on recurrent bills, and classes in simple financial literacy could eliminate the need for many veterans to be placed in this program. There are now computer applications at the U.S. Department of Veterans Affairs (VA) for everything from “e-Benefits” to “MyHealth-e-Vet” to PTSD advisor that veterans can download from VA. The point is that there are practical steps that can be taken to assist the veteran to live independently short of placing more veterans into the fiduciary program.

There also needs to be more objective criteria for taking the rather dramatic step of “infantilizing” veterans by putting them into the fiduciary program. There must be clear standard ways for veterans to get out of this program once placed into it.

The preference in choosing a fiduciary for a veteran for whom this is the only alternative should be someone who can be bonded, who has close personal relationship with the veteran, and who lives in the same general geographic area as the veteran, knows the validity of businesses in that area, and can automate as many of the veterans standard recurrent expenses as possible.

Much of the basis of our comments today are based on the Inspector General's (IG) Report 09–1999–120, dated March 31, 2010, and on the General Accountability Office Report GAO–10–241, dated February of 2010, as well as anecdotal evidence gleaned from our local leaders and service representatives around the nation. There has also been verbal briefings from staff at the Veterans Benefits Administration

(VBA) that indicate they know they have a problem, and that they have reassigned as many as 80 staff from adjudication to work on doing quality assurance for the fiduciary program.

As we have noted before this committee in the past, there is no clear indication, to our knowledge, of a coherent plan for getting a handle on the parameters of this problem. VA simply does not know who is responsible for each veteran involved. Many of these veterans have major impairments because of schizophrenia or other condition that means that they are unable to properly care for themselves to the point that someone else needs to take charge of their financial affairs for their protection and well being. Seen from this perspective, they are the protectors of these veterans. Yet VA apparently does not know exactly who is responsible for each and every veteran, and only recently has started to move to at least systematically investigate what is actually occurring at each station. In the recent past it was clear to all that they were not doing even a reasonable minimal job of monitoring to ensure that each and every veteran is properly cared for in regard to their safety and general well being.

The first step is getting a handle on who is the fiduciary for each and every veteran involved in the program. We gather that the apparent allocation of additional staff is intended to accomplish this assessment. What about just hiring a certain number of FTEs in VA or Treasury to be fiduciaries, and not take more than a nominal fee from the veteran's check such as \$8 (the amount of one VHA co-pay)? This would stretch the veterans' resources much further than usual.

In any case, what should be expressly forbidden is paying fiduciaries a lump sum taken from retroactive disability payments, as is the case today.

It would appear that there are still not clear guidelines on who should be a fiduciary, i.e., meaningful minimum standards and determination of eligibility for same. It is clear that such standards and certification are needed, hopefully without creating a needlessly bureaucratic mass of red tape. It also appears that there is a need for training and quality assurance mechanisms that would be appropriate for all staff assigned to do fiduciary work, but particularly the new staff. In any there should never be a case of one person (often an attorney) serving as fiduciary for dozens of veterans (or even more) where the veteran is seen not as a human being to be cared for, but rather seen as a profit center.

What is perhaps most distressing about the IG reports referenced above was the lack of follow through. There was no implementation of many of the recommendations in the IG Report from 2006 as pledged by the Veterans Benefits Administration (VBA) in their Agency response to that 2006 report. Some (but not all) of those recommendations from both 2006 and from 2010 are just being implemented now as a run-up to this hearing. This has been a major problem at the VA and at the VA IG historically, in that there has been a failure by the IG to follow through to ensure that the pledged corrective action has been taken. As importantly, when the officials in the part of the agency under review pledge to take action, they should be held to this pledge.

Because the majority of the more than 100,000 veterans who have fiduciary agents are in poor mental and/or physiological health, there should be regular communication between Veterans Health Administration (VHA) personnel and whoever is acting as fiduciary agent/guardian. Unless we missed it, monitoring of health condition does not even appear to be on the radar screen as one of the key factors in any evaluation of this program. Is the living situation for the veteran appropriate or not, given his/her disabilities? Is he/she getting to regular appointments at VHA? Does the veteran have adequate shelter, adequate nutrition, assistance to ensure proper hygiene and clothing appropriate to the season, access to needed transportation, and overall well being of the veteran? These are literally life and death questions to which the answer is often not known by those who should be on top of tracking those in need of a fiduciary.

The aggregate amount of monthly income is very significant for the veterans in this program. The size of the aggregate estate of these veterans combined is at least several billion dollars. Any time there is that kind of money there had better be strong accountability mechanisms to ensure that it is being used for the intended purpose(s).

To not have clear guidelines and consistent monitoring only invites misuse and misappropriation of these funds. There appears to be so little in the way of effective tracking and oversight of this program that VA does not have any idea if the funds are being used correctly. This is akin to shipping \$10 Billion in cash into the war zone in Iraq and then acting surprised that they could only account for less than a third of the money. It is just not a prudent or wise thing to do.

VVA hears anecdotal stories about attorneys or others who are acting as agents/guardians for many veterans whom they have never met except over the telephone.

It seems pretty clear to us that there is no relationship to speak of in positive way between the veteran and the fiduciary. As noted above, it appears they see a “profit center” and not a human being who served their country well who is now in dire need. It seems pretty clear to us that these people are getting more than the 4% of funds being handled in the name of the veteran. In fact the record keeping at the VBA does not appear to even be to the level where this can even be monitored or detected. Looked at from both a fiscal point of view as well as a human point of view, this must change.

In short, there must be a cap placed on the number of veterans a fiduciary may represent, and much closer monitoring of where the money is going. Additionally, VV suggests an overall cap on total fees going to each fiduciary, and that fees should not be based on percentage of a veteran’s benefits but rather on work done.

There is still a need for VBA to make a significant effort to put such a system in place as quickly as possible. To not move boldly and quickly would be irresponsible, and leave many of our most vulnerable veterans subject to abuse and theft of resources that is rightfully theirs.

While it may not be practical to just “start over” it is clear that dramatic change is called for in this area. There is finally at least some progress toward straightening out the C&P system because VA has admitted that they have a problem, and is now recognizing that the VBA must treat the Veterans Service Organizations (VSO) as well as state and local partners as true equal partners in this process of reform. We suggest that the same holds true for the fiduciary program at VA.

The welfare of the individual veterans who are least able to fend for him/her self should be enough to drive immediate reform. Added to that primary responsibility is the need to properly account for taxpayer dollars, and the VA and Congressional responsibility to ensure those funds are being used correctly for the welfare of the intended recipients.

Thank you for this opportunity to present our views here today. I will be happy to answer any questions.

STATEMENTS FOR THE RECORD

LORI PERKIO

Mr. Chairman and Members of the Subcommittee:

Thank you for the opportunity to provide The American Legion’s views on the Department of Veterans Affairs (VA) Fiduciary Program. We testified on April 22, 2010 on this same program and while there have been some improvements; more still needs to be done.

VA oversees appointment and management of fiduciaries who act on the behalf of veterans/surviving spouse or dependent children referred to as “beneficiaries” who are deemed mentally incompetent and unable to manage their finances. Upon notification of incompetency, a VA Field Examiner will investigate the beneficiary’s social, economic and industrial impairment then recommends appointment of a fiduciary. The VA Fiduciary is responsible for managing VA monetary benefits ensuring the beneficiary’s just debts are paid. Other responsibilities include utilizing funds for daily needs such as food, clothing housing, medical expenses, and personal items of the beneficiary and his /her recognized dependents. The veteran should be able to live a lifestyle as any other person who is not within the Fiduciary program. The appointed Fiduciary is allowed to charge a fee of up to 4% of the VA benefits paid to the beneficiary. If the beneficiary is married, the spouse may receive payments on the beneficiary’s behalf. Selection of a Fiduciary involves analysis of current credit report, disclosure of criminal background and consideration of the opinion of character witness(es).

In 2008, the Veterans Benefits Administration, which oversees VA’s Fiduciary Program, established a Western Hub Fiduciary Hub pilot program in Salt Lake City, UT. Prior to the consolidation, VA Regional Offices (RO) were performing poorly in the average number of days to appoint a fiduciary and also with the average number of days for follow up visits. At the time of our testimony in 2010, the Western Hub Fiduciary average for initial days to appoint fiduciaries was 45 days and that number decreased to 38 days in FY 2011. However, the average number of days for follow up visits in 2010 was 120 days but in FY 2011 that number increased to 151 days.

After the Western Hub Fiduciary model became operational in 2010, VA began consolidation of other regions across the United States in Fiscal Year 2012. Those Hubs and locations include: Indianapolis, Milwaukee, WI; Louisville, KY; Lincoln,

NE and Columbia, SC. VA is adding an additional 58 Field Examiners to their current number of 310. Unfortunately, these 58 additional personnel are being pulled from other areas of the Veterans Benefits Administration (VBA) such as Compensation (currently experiencing backlog). A total of 368 Field Examiners will be responsible for approximately 123,000 beneficiaries. Equally disturbing is that new Field Examiners training consists of two weeks formal training, an additional two weeks field training and then they are assigned a mentor for 60 days with 100 percent review for the following 90 days. Field Examiners do not work within the Regional Office or at the Hub but from their homes. Moreover, Field Examiners are not required to provide contact information to beneficiaries. The assigned location of the Field Examiner is determined by population density of beneficiaries. This however, does not take into account the travel time in less populated states with larger geographical areas.

Previous Recommendations:

The following recommendations were presented at the time of our last testimony and here is an update on their progress:

1. The American Legion recommended an additional Full Time Employee (FTE) be funded and authorized within each RO and PMC solely dedicated to Fiduciary Program management and oversight.

Currently: VBA does not feel this is necessary with the implementation of an 800 number currently being tested which will be solely dedicated to Fiduciary issues. This 800 number will direct the caller to the Fiduciary Hub within the callers region or allow the caller to request assistance from another Hub outside the calling area. Until it becomes fully operational, callers are directed to call 1-800-827-1000. VBA changed their claims assistance toll free number (827-1000) from RO access and consolidated them into areas. Unfortunately, this has become an exercise in futility as the call centers are so busy the caller is asked to leave a number to be called back which more often than not does not happen. The American Legion continues to urge Congress to ensure VBA hires a Fiduciary Program Coordinator to work within each Regional Office to improve coordination between Fiduciary Hubs, ROs and Field Examiners.

2. The American Legion recommended Congress appropriate funding to VBA's Information Technology (IT) budget to set up an IT software package within all of the RO's Fiduciary Program Units, PMCs, and Salt Lake City Fiduciary Hub to enhance communications between each of these offices.

Currently: The VBA Fiduciary program is in the progress of creating Fiduciary Screens within the current Veterans Benefits Management System for tracking status of Fiduciary claims. The software program is currently being written with a projected completion date of approximately two years. A target date for implementation of the program is not available at this time.

3. The American Legion recommends that part of the software package include reminders or alerts throughout the process to ensure that no paperwork is lost or falls through the cracks. This recommendation and current status is addressed above.

4. The American Legion recommends that appointed Fiduciaries must be co-located within the at least a 300 mile radius of the beneficiary.

Veteran Personal Stories:

The importance of solving the issues associated with VA's Fiduciary programs can best be illustrated with the personal stories of some affected veterans. All too often, by simply looking at numbers, program projections and reports, we forget the human face of this problem. Because of the nature of the competency challenges involved for veterans requiring a Fiduciary, these are among our nation's most vulnerable veterans.

In August of 2011, the Western Area Fiduciary Hub was notified that a veteran was rated incompetent and a field examination for a fiduciary was required. The son of this veteran, already the court appointed Power of Attorney for this veteran, requested to be appointed fiduciary for this veteran, but this family request was not granted.

By late September, a Field Examiner completed an examination, and appointed an outside fiduciary for the veteran. However, two months later, in November, the veteran's local Regional Office released to the fiduciary in question a check for \$385,966. As there had been no previous notification of any back payment, the fiduciary contacted VA for information about how to process this overlarge payment, and was informed she would need to obtain a surety bond to protect the funds and

that the Field Examiner would have to contact her to complete a new budget for the veteran.

This situation is still being investigated, including the possibility that the veteran's son, who had initially sought to be appointed fiduciary as the veteran's Power of Attorney, may well wind up being finally designated as such. However, months have gone by and the veteran is unable to gain access to money that is rightfully his.

In another matter, a veteran applied for Pension benefits in 2009. In 2010, with a diagnosis of ischemic cardiomyopathy from private medical records, the veteran's claim was upgraded to a straight benefits claim under the presumptions inherent for Agent Orange related illness. Further medical evidence established, over the course of 2010, multiple related conditions dating back as far as 2007, as well as the need for specially adaptive housing amongst other concerns.

In a VA letter dated March 23, 2011 the entire estimated back pay was found to be \$163,256 the entirety of which was withheld. Fully seven months later, in late October, the veteran received a decision letter stating:

"Review of your claims file shows the rating decision of March 22, 2011, proposed a finding of incompetency. It was noted in that decision there was a Delegation of Rights and responsibilities signed by you and your physician that you are not able of understanding your rights due to dementia due to Parkinson's disease, dated August 25, 2010. You were sent a VA letter dated March 23, 2011, informing you of our right to submit any evidence, information, or statement that will present your side of the case. To date, no response has been received from you. Since there is a definitive finding of incompetency by a physician in this case and you are not shown to be able to manage personal affairs to include disbursement of funds, we have determined you are incompetent for purposes of managing VA payments."

Ultimately, the veteran passed away awaiting appointment of his sister as fiduciary. During the entire process, his sister had been providing for his nursing care and doing so out of her own pocket.

These two examples provide insight into cases where close family members are already providing close care to these veterans, in some cases with court appointed POA authority, yet these veterans still must wait months and even years to receive hundreds of thousands of dollars in benefits. These benefits belong to these veterans, yet they can derive no use from them as they are held back beyond yards of red tape and miles of obstacles and delays. We cannot keep veterans from benefits belonging to them, and sadly these cases are not unique. American Legion service officers come across stories like these on a regular basis and have been all too eager to share these stories in the hopes that some good will come towards reforming this system.

Conclusions:

It is worth reiterating that these are among our most vulnerable veterans. As the nation's veterans experience mental health trauma or diseases, they or their family members should not have to worry about receiving their earned benefits. While The American Legion recognizes VA's attempts to improve the situation, clearly there is still much work to be done. The Fiduciary Hubs may have shown some improvement in reduced timelines for a portion of the process, the phone banks for these centers still lack direct access for veterans' service officers, and the remote nature of these facilities adds an additional layer of remove from these increasingly vulnerable veterans. Furthermore the improvements to manpower for this task cannot come at the expense of manpower in the regular claims processing, as all are aware of the backlog struggles in that arena. The American Legion, through our network of service officers, is working hard to gain justice for these veterans as these difficult scenarios present themselves, but clearly this problem will not be solved overnight.

WOUNDED WARRIOR PROJECT

Chairman Johnson, Ranking Member Donnelly, and Members of the Subcommittee:

Wounded Warrior Project (WWP) applauds your holding this hearing, and appreciates the opportunity to submit this statement for the record. Through our long work with severely-wounded veterans and their family caregivers, many of whom are fiduciaries, WWP brings a unique understanding to the operation, and shortcomings, of VA's Fiduciary Program.

We commend to your attention the testimony of Pam Estes, a dedicated mother and caregiver of her wounded warrior son, Jason, who has for years also served as a fiduciary to manage his VA compensation. The frustration evident in Mrs. Estes' statement mirrors that of many family caregivers who struggle to do the best for their wounded loved ones. While these caregiver-fiduciaries generally understand VA's oversight responsibility to the beneficiary – they often are left to feel as though they are suspect, and subject to a rigid, intrusive, and sometimes even unreasonable process that ignores abundant evidence of their dedication to their loved one.

Pam Estes' experience is anything but unique. But it is a telling comment on the management of this program, its requirements have been problematic for an individual with a background in accounting!

The experience of other caregivers is instructive. Asked to describe their experience with the fiduciary program, one caregiver-fiduciary responded:

"They don't really help with management [of assets] but audit every two years every penny I spend for my son's care. [There are] not many guidelines and auditors question expenses when they know nothing about the care needed, [such as asking,] why am I buying him movies and music when he has a brain injury ... really?"

A New Mexico caregiver questions the intense level of detail VA requires, noting that she is also a fiduciary for her son's SSDI benefits, but that in contrast to VA:

"Social Security accounting paperwork is simple. They have two categories: 1. Food and housing, and 2. Clothing, education, medical and dental, recreation or personal items. No bank statement or bank signatures are needed. If this were the case with the VA, [reporting] would not be an issue."

Another draws a similar contrast, commenting:

"Each year I am required by the Social Security Administration to file a formal fiduciary accountability report. [Unlike VA's requirements,] it is user-friendly, quick and inclusive of necessary pertinent information."

VA's demanding requirements are not only difficult, fiduciaries report that they are on their own:

"When the paperwork arrived at the end of the year, there were no instructions or assistance to do it. I had to figure out how to do everything on my own. I asked for software that I could use to make it easier to do the accounting but I was told there was none. I had to create an excel spreadsheet to enter in the amounts in the categories that were requested, and sometimes it takes me up to 2 weeks to complete all the data entry."

Caregivers express frustration over the fact that, despite being closely and frequently monitored under the Veterans Health Administration's Caregiver-Assistance Program, they are closely scrutinized again by the Veterans Benefits Administration:

"We are required to purchase, annually, a Surety Bond that costs roughly \$500 to \$600 to 'protect the funds of the service member against the fiduciary'. I find this appalling. We are financially responsible, debt-free, tax-paying ADULTS nearly 55 years old. We have managed to pull our son out of all debt and have secured funds for his future and meet/exceed his daily needs responsibly. When I'm forced to 'line item' Walmart receipts this is TOO far! I have to 'ask permission' to pay property taxes and home owner insurances that run over \$ 1,000.00. I have to ask a stranger permission prior to making a purchase, and submit reasoning as to why it's needed. [Under the Caregiver-Assistance Program] there is a VA representative that physically comes inside our home every 90 days that walks into every room (including my private bedroom and bath), checks every closet and cupboard, and refrigerator to 'inspect' the level of care our service member receives, and yet additionally we are probed yearly by a forensic accounting that seemingly investigates for 'murderous' inflections."

Others echo the sense of insecurity Pam Estes cited in her statement, aggravated when VA auditors are insensitive or threatening. As one reported:

"[The auditor] went on to say that ... it's 'the government's money' and since he is representing the government that he could tell me what to spend the money on and

that our electric bill was too high and that during the summer in Florida that I shouldn't run the A/C on at night!"

Understandably, VBA must be "on guard" in managing a fiduciary program. But it does not seem to take account of the unique circumstances of family members who have devoted themselves to the full-time care of severely wounded warriors, and who also serve as their fiduciaries. Parents and spouses of wounded warriors have made great sacrifices – often giving up careers and depleting savings—to care for their loved ones. Many have been appointed fiduciaries. Their love and dedication to their wounded spouses and children does not change in any way by virtue of taking on new responsibilities as a fiduciary.

As we understand it, VA policy recognizes that all fiduciary cases do not require the same degree of attention and supervision, and that field examiners should consider the unique circumstances of each case. But there appears to be wide variability in how or even whether examiners' exercise that judgment in their work with family members who are not only fiduciaries for severely wounded veterans, but also their full-time caregivers.

It is tragic that parents and spouses who over time have surely proven their dedication to their loved one, and have taken on the responsibility to serve as fiduciaries, should have to deal with a system that still appears to be marked by rigidity, intrusiveness, demanding of unnecessarily detailed reporting, and unreasonableness when it conducts oversight of those caregivers in their role as the veteran's fiduciary.

VA Fiduciary Program policy should provide that a devoted family member who furnishes daily care for a severely wounded veteran should not be treated as an object of VA suspicion – either in terms of rigid management of their budgeting or intrusive home visits—simply because the individual serves as the veteran's fiduciary. These families should be treated with dignity. VBA should substantially revise its policy and practice to reflect far greater balance and understanding as it relates to caregiver-fiduciaries who have demonstrated that they do not pose significant risk and have earned VA's trust.

VA officials have acknowledged a need for more training for the fiduciary program staff. It should also better inform family members of their responsibilities in agreeing to serve as fiduciaries. VBA officials led us to believe that they were committed to remedying the kinds of problems caregiver-fiduciaries have experienced. But WWP is not aware of substantial remedial measures having been instituted, let alone of sensible steps whereby VBA could learn from VHA's caregiver-monitoring that a family-caregiver who is also a fiduciary for the veteran is reliable and caring.

In short, a devoted family member who provides consistent, high-quality daily care for a severely wounded veteran has surely earned VA's trust and should not be treated as an object of VA suspicion simply because the individual serves as the veteran's fiduciary. Families who have already earned VA's trust should not be subjected to rigid budgeting, unnecessarily detailed accounting, ongoing intrusive scrutiny, or threatening warnings without substantial cause. Finally, VA should work to achieve more uniform standards and greater consistency in its application of fiduciary oversight policy.

QUESTIONS FOR THE RECORD

Question & Response From: Hon. Bill Johnson, Chairman. Subcommittee on Oversight and Investigations - To: U.S. Department of Veterans Affairs

Question 1: When was the last time a fiduciary was removed from his/her duties?

Response: As of February 27, 2012, the last date on which a VA-appointed fiduciary was removed from his or her duties due to inadequate performance was February 24, 2012.

Question 2: How many fiduciaries were removed as a result of performance related issues? Please provide the dates of removal, covering the last three years.

Response: The number of fiduciaries removed based upon inadequate performance by fiscal year (FY) is as follows:

FY 2009 = 611
 FY 2010 = 629
 FY 2011 = 551
 FY 2012 = 202 (through February 28)
Total 1,993

VA removes fiduciaries when they misuse a beneficiary's funds or do not perform adequately, such as an inability or unwillingness to account. Upon identification of

unresolved performance issues, VA acts promptly to remove fiduciaries. Less than one percent of all fiduciaries are removed for inadequate performance each year. The attached spreadsheet (**Attachment A**) lists the dates of each removal.

Attachement A—Fiduciaries Removed (post hearing question #2)

FY 2009 DATE OF REMOVAL	FY 2010 DATE OF REMOVAL	FY 2011 DATE OF REMOVAL	FY 2012 (through 2/28/12) DATE OF REMOVAL
10/2/2008	10/1/2009	10/1/2010	10/3/2011
10/2/2008	10/2/2009	10/1/2010	10/3/2011
10/2/2008	10/2/2009	10/3/2010	10/5/2011
10/3/2008	10/5/2009	10/4/2010	10/5/2011
10/3/2008	10/6/2009	10/4/2010	10/6/2011
10/6/2008	10/6/2009	10/5/2010	10/6/2011
10/6/2008	10/6/2009	10/5/2010	10/7/2011
10/6/2008	10/6/2009	10/6/2010	10/11/2011
10/6/2008	10/6/2009	10/6/2010	10/11/2011
10/6/2008	10/6/2009	10/6/2010	10/12/2011
10/7/2008	10/6/2009	10/6/2010	10/12/2011
10/9/2008	10/6/2009	10/7/2010	10/12/2011
10/9/2008	10/7/2009	10/7/2010	10/12/2011
10/9/2008	10/7/2009	10/7/2010	10/12/2011
10/9/2008	10/7/2009	10/7/2010	10/13/2011
10/9/2008	10/8/2009	10/7/2010	10/14/2011
10/10/2008	10/8/2009	10/7/2010	10/17/2011
10/14/2008	10/8/2009	10/8/2010	10/17/2011
10/14/2008	10/8/2009	10/8/2010	10/17/2011
10/15/2008	10/8/2009	10/12/2010	10/17/2011
10/15/2008	10/9/2009	10/12/2010	10/18/2011
10/16/2008	10/9/2009	10/13/2010	10/18/2011
10/16/2008	10/9/2009	10/13/2010	10/18/2011
10/16/2008	10/13/2009	10/14/2010	10/18/2011
10/17/2008	10/13/2009	10/15/2010	10/18/2011
10/17/2008	10/13/2009	10/15/2010	10/18/2011
10/17/2008	10/14/2009	10/15/2010	10/19/2011
10/17/2008	10/14/2009	10/15/2010	10/19/2011
10/17/2008	10/15/2009	10/19/2010	10/20/2011

Attachement A—Fiduciaries Removed (post hearing question #2)—
Continued

FY 2009 DATE OF REMOVAL	FY 2010 DATE OF REMOVAL	FY 2011 DATE OF REMOVAL	FY 2012 (through 2/28/12) DATE OF REMOVAL
10/17/2008	10/15/2009	10/19/2010	10/21/2011
10/20/2008	10/15/2009	10/19/2010	10/21/2011
10/20/2008	10/16/2009	10/22/2010	10/24/2011
10/20/2008	10/16/2009	10/22/2010	10/25/2011
10/20/2008	10/20/2009	10/25/2010	10/25/2011
10/20/2008	10/20/2009	10/25/2010	10/25/2011
10/20/2008	10/21/2009	10/25/2010	10/25/2011
10/20/2008	10/22/2009	10/26/2010	10/26/2011
10/20/2008	10/22/2009	10/26/2010	10/26/2011
10/20/2008	10/22/2009	10/27/2010	10/26/2011
10/20/2008	10/22/2009	10/27/2010	10/27/2011
10/20/2008	10/22/2009	10/28/2010	10/28/2011
10/21/2008	10/22/2009	10/28/2010	10/28/2011
10/21/2008	10/23/2009	10/28/2010	10/28/2011
10/21/2008	10/23/2009	10/28/2010	10/28/2011
10/22/2008	10/23/2009	10/28/2010	10/28/2011
10/22/2008	10/23/2009	10/28/2010	10/29/2011
10/23/2008	10/23/2009	10/28/2010	10/31/2011
10/24/2008	10/26/2009	10/28/2010	10/31/2011
10/24/2008	10/27/2009	10/28/2010	10/31/2011
10/24/2008	10/28/2009	10/29/2010	10/31/2011
10/24/2008	10/28/2009	10/29/2010	10/31/2011
10/27/2008	10/29/2009	10/29/2010	11/1/2011
10/27/2008	10/29/2009	10/29/2010	11/1/2011
10/28/2008	10/29/2009	10/29/2010	11/1/2011
10/28/2008	10/29/2009	10/29/2010	11/2/2011
10/29/2008	10/29/2009	10/29/2010	11/3/2011
10/29/2008	10/30/2009	11/2/2010	11/3/2011
10/29/2008	10/30/2009	11/3/2010	11/7/2011
10/31/2008	10/30/2009	11/4/2010	11/7/2011
10/31/2008	11/2/2009	11/5/2010	11/7/2011

**Attachement A—Fiduciaries Removed (post hearing question #2)—
Continued**

FY 2009 DATE OF REMOVAL	FY 2010 DATE OF REMOVAL	FY 2011 DATE OF REMOVAL	FY 2012 (through 2/28/12) DATE OF REMOVAL
10/31/2008	11/2/2009	11/5/2010	11/8/2011
10/31/2008	11/3/2009	11/8/2010	11/8/2011
10/31/2008	11/4/2009	11/8/2010	11/8/2011
10/31/2008	11/4/2009	11/8/2010	11/8/2011
11/3/2008	11/4/2009	11/8/2010	11/9/2011
11/3/2008	11/4/2009	11/9/2010	11/10/2011
11/4/2008	11/5/2009	11/10/2010	11/10/2011
11/4/2008	11/5/2009	11/10/2010	11/14/2011
11/5/2008	11/5/2009	11/10/2010	11/14/2011
11/5/2008	11/5/2009	11/12/2010	11/16/2011
11/5/2008	11/5/2009	11/12/2010	11/16/2011
11/6/2008	11/5/2009	11/12/2010	11/16/2011
11/6/2008	11/6/2009	11/12/2010	11/17/2011
11/6/2008	11/6/2009	11/15/2010	11/17/2011
11/6/2008	11/6/2009	11/15/2010	11/18/2011
11/7/2008	11/6/2009	11/15/2010	11/18/2011
11/7/2008	11/9/2009	11/15/2010	11/18/2011
11/10/2008	11/9/2009	11/16/2010	11/18/2011
11/10/2008	11/9/2009	11/17/2010	11/21/2011
11/11/2008	11/9/2009	11/17/2010	11/21/2011
11/12/2008	11/9/2009	11/17/2010	11/22/2011
11/13/2008	11/9/2009	11/18/2010	11/23/2011
11/14/2008	11/9/2009	11/18/2010	11/25/2011
11/14/2008	11/10/2009	11/19/2010	11/25/2011
11/14/2008	11/10/2009	11/19/2010	11/26/2011
11/19/2008	11/10/2009	11/19/2010	11/28/2011
11/19/2008	11/10/2009	11/19/2010	11/28/2011
11/20/2008	11/12/2009	11/19/2010	11/28/2011
11/21/2008	11/12/2009	11/19/2010	11/28/2011
11/24/2008	11/12/2009	11/22/2010	11/29/2011
11/25/2008	11/12/2009	11/22/2010	11/29/2011

**Attachement A—Fiduciaries Removed (post hearing question #2)—
Continued**

FY 2009 DATE OF REMOVAL	FY 2010 DATE OF REMOVAL	FY 2011 DATE OF REMOVAL	FY 2012 (through 2/28/12) DATE OF REMOVAL
11/25/2008	11/13/2009	11/22/2010	11/29/2011
11/26/2008	11/16/2009	11/23/2010	11/29/2011
11/26/2008	11/16/2009	11/23/2010	11/30/2011
11/26/2008	11/16/2009	11/23/2010	11/30/2011
11/26/2008	11/17/2009	11/23/2010	11/30/2011
11/28/2008	11/18/2009	11/23/2010	11/30/2011
12/2/2008	11/18/2009	11/26/2010	11/30/2011
12/4/2008	11/18/2009	11/26/2010	11/30/2011
12/5/2008	11/19/2009	11/29/2010	12/1/2011
12/5/2008	11/20/2009	11/29/2010	12/1/2011
12/8/2008	11/20/2009	11/30/2010	12/1/2011
12/8/2008	11/20/2009	11/30/2010	12/5/2011
12/8/2008	11/20/2009	11/30/2010	12/5/2011
12/8/2008	11/23/2009	11/30/2010	12/5/2011
12/8/2008	11/23/2009	11/30/2010	12/6/2011
12/8/2008	11/24/2009	12/2/2010	12/6/2011
12/9/2008	11/24/2009	12/2/2010	12/7/2011
12/9/2008	11/24/2009	12/2/2010	12/7/2011
12/9/2008	11/25/2009	12/3/2010	12/7/2011
12/9/2008	11/25/2009	12/3/2010	12/8/2011
12/9/2008	11/25/2009	12/3/2010	12/9/2011
12/9/2008	11/27/2009	12/4/2010	12/9/2011
12/9/2008	11/27/2009	12/6/2010	12/9/2011
12/9/2008	11/28/2009	12/6/2010	12/12/2011
12/10/2008	11/30/2009	12/7/2010	12/12/2011
12/10/2008	11/30/2009	12/7/2010	12/14/2011
12/10/2008	11/30/2009	12/8/2010	12/14/2011
12/11/2008	12/1/2009	12/9/2010	12/14/2011
12/11/2008	12/2/2009	12/9/2010	12/15/2011
12/11/2008	12/2/2009	12/15/2010	12/17/2011
12/11/2008	12/2/2009	12/15/2010	12/19/2011

Attachement A—Fiduciaries Removed (post hearing question #2)—
Continued

FY 2009 DATE OF REMOVAL	FY 2010 DATE OF REMOVAL	FY 2011 DATE OF REMOVAL	FY 2012 (through 2/28/12) DATE OF REMOVAL
12/12/2008	12/2/2009	12/16/2010	12/19/2011
12/15/2008	12/3/2009	12/16/2010	12/20/2011
12/15/2008	12/3/2009	12/16/2010	12/21/2011
12/16/2008	12/3/2009	12/17/2010	12/22/2011
12/16/2008	12/7/2009	12/17/2010	12/22/2011
12/17/2008	12/7/2009	12/20/2010	12/22/2011
12/17/2008	12/8/2009	12/20/2010	12/23/2011
12/17/2008	12/9/2009	12/20/2010	12/23/2011
12/17/2008	12/9/2009	12/20/2010	12/27/2011
12/17/2008	12/10/2009	12/20/2010	12/27/2011
12/17/2008	12/10/2009	12/20/2010	12/28/2011
12/17/2008	12/10/2009	12/20/2010	12/29/2011
12/17/2008	12/11/2009	12/21/2010	12/29/2011
12/18/2008	12/14/2009	12/21/2010	1/4/2012
12/18/2008	12/14/2009	12/22/2010	1/5/2012
12/18/2008	12/15/2009	12/22/2010	1/6/2012
12/18/2008	12/15/2009	12/22/2010	1/9/2012
12/19/2008	12/15/2009	12/22/2010	1/10/2012
12/22/2008	12/16/2009	12/22/2010	1/12/2012
12/23/2008	12/17/2009	12/22/2010	1/12/2012
12/23/2008	12/17/2009	12/23/2010	1/13/2012
12/23/2008	12/17/2009	12/23/2010	1/17/2012
12/23/2008	12/18/2009	12/23/2010	1/17/2012
12/23/2008	12/18/2009	12/23/2010	1/18/2012
12/23/2008	12/21/2009	12/23/2010	1/19/2012
12/23/2008	12/21/2009	12/24/2010	1/19/2012
12/24/2008	12/22/2009	12/28/2010	1/20/2012
12/24/2008	12/22/2009	12/30/2010	1/21/2012
12/24/2008	12/22/2009	12/30/2010	1/21/2012
12/24/2008	12/22/2009	12/30/2010	1/21/2012
12/29/2008	12/22/2009	12/30/2010	1/23/2012

**Attachement A—Fiduciaries Removed (post hearing question #2)—
Continued**

FY 2009 DATE OF REMOVAL	FY 2010 DATE OF REMOVAL	FY 2011 DATE OF REMOVAL	FY 2012 (through 2/28/12) DATE OF REMOVAL
12/30/2008	12/22/2009	12/30/2010	1/24/2012
12/30/2008	12/23/2009	1/3/2011	1/24/2012
12/30/2008	12/28/2009	1/3/2011	1/24/2012
12/31/2008	12/28/2009	1/5/2011	1/25/2012
1/5/2009	12/28/2009	1/5/2011	1/26/2012
1/5/2009	12/28/2009	1/5/2011	1/26/2012
1/6/2009	12/28/2009	1/5/2011	1/26/2012
1/7/2009	12/28/2009	1/6/2011	1/26/2012
1/7/2009	12/29/2009	1/6/2011	1/27/2012
1/8/2009	12/30/2009	1/6/2011	1/27/2012
1/8/2009	12/31/2009	1/6/2011	1/30/2012
1/9/2009	12/31/2009	1/7/2011	1/30/2012
1/9/2009	12/31/2009	1/7/2011	1/30/2012
1/9/2009	12/31/2009	1/7/2011	1/30/2012
1/12/2009	1/7/2010	1/7/2011	1/30/2012
1/12/2009	1/7/2010	1/8/2011	1/30/2012
1/12/2009	1/8/2010	1/8/2011	1/30/2012
1/13/2009	1/8/2010	1/10/2011	1/31/2012
1/13/2009	1/11/2010	1/10/2011	1/31/2012
1/13/2009	1/12/2010	1/11/2011	1/31/2012
1/15/2009	1/12/2010	1/12/2011	1/31/2012
1/16/2009	1/12/2010	1/12/2011	2/2/2012
1/20/2009	1/13/2010	1/12/2011	2/2/2012
1/20/2009	1/14/2010	1/13/2011	2/3/2012
1/20/2009	1/14/2010	1/13/2011	2/3/2012
1/21/2009	1/14/2010	1/13/2011	2/6/2012
1/21/2009	1/15/2010	1/13/2011	2/6/2012
1/21/2009	1/19/2010	1/13/2011	2/7/2012
1/22/2009	1/19/2010	1/14/2011	2/7/2012
1/22/2009	1/19/2010	1/14/2011	2/8/2012
1/23/2009	1/19/2010	1/14/2011	2/9/2012

Attachement A—Fiduciaries Removed (post hearing question #2)—
Continued

FY 2009 DATE OF REMOVAL	FY 2010 DATE OF REMOVAL	FY 2011 DATE OF REMOVAL	FY 2012 (through 2/28/12) DATE OF REMOVAL
1/26/2009	1/20/2010	1/14/2011	2/10/2012
1/26/2009	1/20/2010	1/15/2011	2/10/2012
1/26/2009	1/21/2010	1/15/2011	2/13/2012
1/27/2009	1/21/2010	1/15/2011	2/13/2012
1/27/2009	1/21/2010	1/15/2011	2/15/2012
1/27/2009	1/22/2010	1/18/2011	2/16/2012
1/28/2009	1/22/2010	1/18/2011	2/16/2012
1/28/2009	1/22/2010	1/18/2011	2/16/2012
1/29/2009	1/22/2010	1/19/2011	2/17/2012
1/29/2009	1/22/2010	1/19/2011	2/17/2012
1/30/2009	1/22/2010	1/20/2011	2/24/2012
1/30/2009	1/25/2010	1/20/2011	2/24/2012
1/30/2009	1/25/2010	1/20/2011	2/24/2012
1/30/2009	1/26/2010	1/21/2011	2/27/2012
1/30/2009	1/26/2010	1/24/2011	2/27/2012
2/3/2009	1/26/2010	1/25/2011	2/27/2012
2/4/2009	1/26/2010	1/25/2011	2/28/2012
2/4/2009	1/26/2010	1/26/2011	2/28/2012
2/4/2009	1/27/2010	1/27/2011	
2/5/2009	1/28/2010	1/27/2011	
2/6/2009	1/28/2010	1/28/2011	
2/6/2009	1/29/2010	1/28/2011	
2/6/2009	1/29/2010	1/28/2011	
2/9/2009	1/29/2010	1/28/2011	
2/10/2009	1/29/2010	1/31/2011	
2/12/2009	1/30/2010	2/3/2011	
2/12/2009	2/1/2010	2/3/2011	
2/12/2009	2/2/2010	2/3/2011	
2/12/2009	2/3/2010	2/4/2011	
2/13/2009	2/3/2010	2/4/2011	
2/13/2009	2/4/2010	2/7/2011	

**Attachement A—Fiduciaries Removed (post hearing question #2)—
Continued**

FY 2009 DATE OF REMOVAL	FY 2010 DATE OF REMOVAL	FY 2011 DATE OF REMOVAL	FY 2012 (through 2/28/12) DATE OF REMOVAL
2/16/2009	2/4/2010	2/7/2011	
2/17/2009	2/4/2010	2/7/2011	
2/17/2009	2/4/2010	2/7/2011	
2/17/2009	2/4/2010	2/7/2011	
2/18/2009	2/5/2010	2/8/2011	
2/18/2009	2/5/2010	2/8/2011	
2/19/2009	2/5/2010	2/9/2011	
2/19/2009	2/8/2010	2/10/2011	
2/19/2009	2/8/2010	2/10/2011	
2/19/2009	2/8/2010	2/10/2011	
2/19/2009	2/9/2010	2/10/2011	
2/19/2009	2/9/2010	2/10/2011	
2/20/2009	2/9/2010	2/10/2011	
2/20/2009	2/10/2010	2/11/2011	
2/20/2009	2/11/2010	2/11/2011	
2/20/2009	2/16/2010	2/14/2011	
2/20/2009	2/16/2010	2/16/2011	
2/20/2009	2/16/2010	2/17/2011	
2/20/2009	2/17/2010	2/18/2011	
2/20/2009	2/17/2010	2/18/2011	
2/20/2009	2/17/2010	2/23/2011	
2/23/2009	2/17/2010	2/23/2011	
2/24/2009	2/18/2010	2/24/2011	
2/24/2009	2/18/2010	2/24/2011	
2/24/2009	2/19/2010	2/24/2011	
2/24/2009	2/22/2010	2/24/2011	
2/24/2009	2/22/2010	2/24/2011	
2/24/2009	2/22/2010	2/24/2011	
2/25/2009	2/22/2010	2/25/2011	
2/25/2009	2/22/2010	2/25/2011	
2/26/2009	2/22/2010	2/28/2011	

Attachement A—Fiduciaries Removed (post hearing question #2)—
Continued

FY 2009 DATE OF REMOVAL	FY 2010 DATE OF REMOVAL	FY 2011 DATE OF REMOVAL	FY 2012 (through 2/28/12) DATE OF REMOVAL
2/27/2009	2/22/2010	2/28/2011	
2/27/2009	2/24/2010	2/28/2011	
2/27/2009	2/24/2010	2/28/2011	
3/2/2009	2/24/2010	3/2/2011	
3/2/2009	2/24/2010	3/2/2011	
3/3/2009	2/25/2010	3/4/2011	
3/3/2009	2/25/2010	3/4/2011	
3/4/2009	2/25/2010	3/7/2011	
3/4/2009	2/26/2010	3/7/2011	
3/5/2009	2/26/2010	3/7/2011	
3/5/2009	2/26/2010	3/7/2011	
3/5/2009	2/27/2010	3/7/2011	
3/6/2009	2/28/2010	3/7/2011	
3/7/2009	3/1/2010	3/7/2011	
3/9/2009	3/3/2010	3/7/2011	
3/9/2009	3/3/2010	3/8/2011	
3/9/2009	3/3/2010	3/9/2011	
3/12/2009	3/5/2010	3/10/2011	
3/12/2009	3/5/2010	3/11/2011	
3/13/2009	3/5/2010	3/11/2011	
3/16/2009	3/5/2010	3/11/2011	
3/16/2009	3/5/2010	3/11/2011	
3/17/2009	3/5/2010	3/11/2011	
3/17/2009	3/5/2010	3/14/2011	
3/18/2009	3/8/2010	3/14/2011	
3/19/2009	3/8/2010	3/14/2011	
3/20/2009	3/11/2010	3/14/2011	
3/23/2009	3/11/2010	3/14/2011	
3/23/2009	3/11/2010	3/14/2011	
3/24/2009	3/11/2010	3/14/2011	
3/24/2009	3/12/2010	3/15/2011	

**Attachement A—Fiduciaries Removed (post hearing question #2)—
Continued**

FY 2009 DATE OF REMOVAL	FY 2010 DATE OF REMOVAL	FY 2011 DATE OF REMOVAL	FY 2012 (through 2/28/12) DATE OF REMOVAL
3/26/2009	3/12/2010	3/15/2011	
3/26/2009	3/12/2010	3/15/2011	
3/26/2009	3/15/2010	3/15/2011	
3/26/2009	3/15/2010	3/16/2011	
3/27/2009	3/16/2010	3/16/2011	
3/30/2009	3/17/2010	3/16/2011	
3/31/2009	3/18/2010	3/16/2011	
3/31/2009	3/18/2010	3/17/2011	
4/1/2009	3/19/2010	3/18/2011	
4/2/2009	3/22/2010	3/18/2011	
4/2/2009	3/22/2010	3/18/2011	
4/2/2009	3/22/2010	3/22/2011	
4/3/2009	3/22/2010	3/23/2011	
4/6/2009	3/23/2010	3/23/2011	
4/6/2009	3/23/2010	3/23/2011	
4/6/2009	3/23/2010	3/24/2011	
4/9/2009	3/24/2010	3/24/2011	
4/9/2009	3/24/2010	3/24/2011	
4/9/2009	3/24/2010	3/25/2011	
4/9/2009	3/24/2010	3/25/2011	
4/10/2009	3/25/2010	3/25/2011	
4/13/2009	3/25/2010	3/25/2011	
4/13/2009	3/26/2010	3/25/2011	
4/14/2009	3/26/2010	3/28/2011	
4/14/2009	3/26/2010	3/28/2011	
4/15/2009	3/26/2010	3/30/2011	
4/15/2009	3/29/2010	3/31/2011	
4/16/2009	3/29/2010	3/31/2011	
4/16/2009	3/29/2010	4/1/2011	
4/17/2009	3/30/2010	4/1/2011	
4/20/2009	3/30/2010	4/1/2011	

**Attachement A—Fiduciaries Removed (post hearing question #2)—
Continued**

FY 2009 DATE OF REMOVAL	FY 2010 DATE OF REMOVAL	FY 2011 DATE OF REMOVAL	FY 2012 (through 2/28/12) DATE OF REMOVAL
4/20/2009	3/30/2010	4/1/2011	
4/20/2009	3/30/2010	4/5/2011	
4/21/2009	3/30/2010	4/6/2011	
4/21/2009	3/31/2010	4/7/2011	
4/22/2009	3/31/2010	4/7/2011	
4/22/2009	3/31/2010	4/7/2011	
4/22/2009	3/31/2010	4/8/2011	
4/24/2009	4/1/2010	4/8/2011	
4/24/2009	4/1/2010	4/8/2011	
4/24/2009	4/1/2010	4/11/2011	
4/24/2009	4/1/2010	4/11/2011	
4/27/2009	4/2/2010	4/12/2011	
4/28/2009	4/2/2010	4/12/2011	
4/28/2009	4/2/2010	4/13/2011	
4/28/2009	4/2/2010	4/13/2011	
4/28/2009	4/5/2010	4/14/2011	
4/29/2009	4/6/2010	4/14/2011	
4/29/2009	4/6/2010	4/14/2011	
4/29/2009	4/7/2010	4/15/2011	
4/29/2009	4/7/2010	4/15/2011	
4/29/2009	4/7/2010	4/18/2011	
4/29/2009	4/8/2010	4/21/2011	
4/30/2009	4/9/2010	4/21/2011	
4/30/2009	4/12/2010	4/21/2011	
4/30/2009	4/12/2010	4/22/2011	
4/30/2009	4/12/2010	4/26/2011	
5/4/2009	4/13/2010	4/26/2011	
5/4/2009	4/13/2010	4/26/2011	
5/4/2009	4/15/2010	4/26/2011	
5/4/2009	4/15/2010	4/26/2011	
5/5/2009	4/19/2010	4/27/2011	

**Attachement A—Fiduciaries Removed (post hearing question #2)—
Continued**

FY 2009 DATE OF REMOVAL	FY 2010 DATE OF REMOVAL	FY 2011 DATE OF REMOVAL	FY 2012 (through 2/28/12) DATE OF REMOVAL
5/5/2009	4/19/2010	5/3/2011	
5/5/2009	4/21/2010	5/3/2011	
5/6/2009	4/22/2010	5/4/2011	
5/6/2009	4/22/2010	5/4/2011	
5/6/2009	4/22/2010	5/4/2011	
5/6/2009	4/22/2010	5/4/2011	
5/8/2009	4/23/2010	5/6/2011	
5/8/2009	4/23/2010	5/9/2011	
5/8/2009	4/24/2010	5/9/2011	
5/8/2009	4/26/2010	5/9/2011	
5/8/2009	4/26/2010	5/10/2011	
5/8/2009	4/27/2010	5/11/2011	
5/12/2009	4/27/2010	5/11/2011	
5/12/2009	4/28/2010	5/12/2011	
5/12/2009	4/29/2010	5/13/2011	
5/13/2009	4/29/2010	5/16/2011	
5/13/2009	4/29/2010	5/16/2011	
5/13/2009	4/29/2010	5/16/2011	
5/14/2009	4/30/2010	5/17/2011	
5/14/2009	4/30/2010	5/18/2011	
5/14/2009	4/30/2010	5/18/2011	
5/15/2009	4/30/2010	5/18/2011	
5/15/2009	5/4/2010	5/18/2011	
5/18/2009	5/5/2010	5/19/2011	
5/19/2009	5/5/2010	5/19/2011	
5/19/2009	5/6/2010	5/20/2011	
5/20/2009	5/10/2010	5/20/2011	
5/20/2009	5/10/2010	5/20/2011	
5/21/2009	5/10/2010	5/20/2011	
5/22/2009	5/10/2010	5/23/2011	
5/22/2009	5/10/2010	5/23/2011	

**Attachement A—Fiduciaries Removed (post hearing question #2)—
Continued**

FY 2009 DATE OF REMOVAL	FY 2010 DATE OF REMOVAL	FY 2011 DATE OF REMOVAL	FY 2012 (through 2/28/12) DATE OF REMOVAL
5/22/2009	5/12/2010	5/24/2011	
5/22/2009	5/12/2010	5/24/2011	
5/26/2009	5/12/2010	5/24/2011	
5/26/2009	5/12/2010	5/24/2011	
5/26/2009	5/12/2010	5/25/2011	
5/27/2009	5/13/2010	5/26/2011	
5/27/2009	5/13/2010	5/26/2011	
5/27/2009	5/13/2010	5/27/2011	
5/27/2009	5/14/2010	5/27/2011	
5/28/2009	5/14/2010	5/27/2011	
5/28/2009	5/14/2010	5/27/2011	
5/28/2009	5/14/2010	5/27/2011	
5/28/2009	5/18/2010	5/31/2011	
5/28/2009	5/18/2010	5/31/2011	
5/28/2009	5/18/2010	6/1/2011	
5/28/2009	5/19/2010	6/2/2011	
5/29/2009	5/19/2010	6/2/2011	
5/29/2009	5/19/2010	6/3/2011	
6/2/2009	5/20/2010	6/6/2011	
6/2/2009	5/20/2010	6/6/2011	
6/2/2009	5/20/2010	6/6/2011	
6/2/2009	5/20/2010	6/7/2011	
6/3/2009	5/20/2010	6/7/2011	
6/3/2009	5/20/2010	6/10/2011	
6/4/2009	5/20/2010	6/10/2011	
6/4/2009	5/20/2010	6/14/2011	
6/5/2009	5/21/2010	6/14/2011	
6/5/2009	5/21/2010	6/14/2011	
6/5/2009	5/21/2010	6/14/2011	
6/5/2009	5/21/2010	6/15/2011	
6/5/2009	5/24/2010	6/15/2011	

**Attachement A—Fiduciaries Removed (post hearing question #2)—
Continued**

FY 2009 DATE OF REMOVAL	FY 2010 DATE OF REMOVAL	FY 2011 DATE OF REMOVAL	FY 2012 (through 2/28/12) DATE OF REMOVAL
6/8/2009	5/24/2010	6/15/2011	
6/8/2009	5/24/2010	6/16/2011	
6/8/2009	5/25/2010	6/16/2011	
6/9/2009	5/25/2010	6/17/2011	
6/9/2009	5/26/2010	6/17/2011	
6/9/2009	5/27/2010	6/20/2011	
6/11/2009	5/27/2010	6/21/2011	
6/12/2009	5/27/2010	6/23/2011	
6/12/2009	5/27/2010	6/23/2011	
6/12/2009	5/27/2010	6/23/2011	
6/12/2009	5/28/2010	6/23/2011	
6/12/2009	5/28/2010	6/24/2011	
6/16/2009	5/28/2010	6/27/2011	
6/16/2009	5/29/2010	6/28/2011	
6/16/2009	6/1/2010	6/28/2011	
6/16/2009	6/2/2010	6/29/2011	
6/16/2009	6/2/2010	6/29/2011	
6/16/2009	6/2/2010	6/30/2011	
6/17/2009	6/3/2010	6/30/2011	
6/17/2009	6/5/2010	6/30/2011	
6/17/2009	6/8/2010	7/1/2011	
6/17/2009	6/8/2010	7/5/2011	
6/17/2009	6/9/2010	7/6/2011	
6/18/2009	6/9/2010	7/6/2011	
6/18/2009	6/10/2010	7/7/2011	
6/18/2009	6/10/2010	7/8/2011	
6/19/2009	6/10/2010	7/11/2011	
6/19/2009	6/10/2010	7/11/2011	
6/22/2009	6/11/2010	7/11/2011	
6/22/2009	6/11/2010	7/11/2011	
6/22/2009	6/11/2010	7/11/2011	

**Attachement A—Fiduciaries Removed (post hearing question #2)—
Continued**

FY 2009 DATE OF REMOVAL	FY 2010 DATE OF REMOVAL	FY 2011 DATE OF REMOVAL	FY 2012 (through 2/28/12) DATE OF REMOVAL
6/23/2009	6/15/2010	7/12/2011	
6/23/2009	6/15/2010	7/12/2011	
6/23/2009	6/16/2010	7/12/2011	
6/23/2009	6/16/2010	7/13/2011	
6/23/2009	6/17/2010	7/13/2011	
6/23/2009	6/17/2010	7/14/2011	
6/23/2009	6/17/2010	7/14/2011	
6/23/2009	6/18/2010	7/14/2011	
6/24/2009	6/18/2010	7/15/2011	
6/25/2009	6/18/2010	7/15/2011	
6/26/2009	6/18/2010	7/15/2011	
6/27/2009	6/18/2010	7/15/2011	
6/29/2009	6/21/2010	7/16/2011	
6/29/2009	6/23/2010	7/19/2011	
6/30/2009	6/24/2010	7/20/2011	
6/30/2009	6/24/2010	7/20/2011	
6/30/2009	6/24/2010	7/21/2011	
7/2/2009	6/24/2010	7/22/2011	
7/6/2009	6/25/2010	7/25/2011	
7/7/2009	6/25/2010	7/26/2011	
7/8/2009	6/28/2010	7/27/2011	
7/8/2009	6/29/2010	7/27/2011	
7/10/2009	6/29/2010	7/28/2011	
7/13/2009	6/30/2010	7/29/2011	
7/13/2009	6/30/2010	7/29/2011	
7/13/2009	6/30/2010	8/3/2011	
7/13/2009	6/30/2010	8/4/2011	
7/14/2009	7/1/2010	8/5/2011	
7/15/2009	7/2/2010	8/5/2011	
7/15/2009	7/2/2010	8/5/2011	
7/15/2009	7/2/2010	8/5/2011	

**Attachement A—Fiduciaries Removed (post hearing question #2)—
Continued**

FY 2009 DATE OF REMOVAL	FY 2010 DATE OF REMOVAL	FY 2011 DATE OF REMOVAL	FY 2012 (through 2/28/12) DATE OF REMOVAL
7/16/2009	7/3/2010	8/8/2011	
7/16/2009	7/7/2010	8/9/2011	
7/17/2009	7/8/2010	8/9/2011	
7/17/2009	7/9/2010	8/10/2011	
7/17/2009	7/9/2010	8/11/2011	
7/17/2009	7/9/2010	8/11/2011	
7/17/2009	7/9/2010	8/11/2011	
7/17/2009	7/12/2010	8/11/2011	
7/17/2009	7/12/2010	8/11/2011	
7/20/2009	7/12/2010	8/12/2011	
7/23/2009	7/12/2010	8/15/2011	
7/23/2009	7/13/2010	8/15/2011	
7/27/2009	7/13/2010	8/15/2011	
7/27/2009	7/13/2010	8/16/2011	
7/27/2009	7/13/2010	8/16/2011	
7/28/2009	7/13/2010	8/17/2011	
7/28/2009	7/14/2010	8/17/2011	
7/29/2009	7/15/2010	8/17/2011	
7/29/2009	7/15/2010	8/18/2011	
7/30/2009	7/15/2010	8/18/2011	
7/30/2009	7/15/2010	8/18/2011	
7/30/2009	7/15/2010	8/19/2011	
7/31/2009	7/15/2010	8/19/2011	
7/31/2009	7/15/2010	8/22/2011	
7/31/2009	7/16/2010	8/22/2011	
7/31/2009	7/16/2010	8/23/2011	
8/3/2009	7/18/2010	8/23/2011	
8/5/2009	7/19/2010	8/23/2011	
8/5/2009	7/19/2010	8/23/2011	
8/5/2009	7/19/2010	8/24/2011	
8/5/2009	7/19/2010	8/24/2011	

**Attachement A—Fiduciaries Removed (post hearing question #2)—
Continued**

FY 2009 DATE OF REMOVAL	FY 2010 DATE OF REMOVAL	FY 2011 DATE OF REMOVAL	FY 2012 (through 2/28/12) DATE OF REMOVAL
8/7/2009	7/19/2010	8/24/2011	
8/7/2009	7/19/2010	8/25/2011	
8/10/2009	7/19/2010	8/25/2011	
8/10/2009	7/20/2010	8/26/2011	
8/11/2009	7/20/2010	8/26/2011	
8/11/2009	7/21/2010	8/26/2011	
8/12/2009	7/21/2010	8/26/2011	
8/13/2009	7/21/2010	8/29/2011	
8/13/2009	7/21/2010	8/29/2011	
8/13/2009	7/22/2010	8/29/2011	
8/14/2009	7/23/2010	8/29/2011	
8/14/2009	7/23/2010	8/29/2011	
8/17/2009	7/23/2010	8/29/2011	
8/17/2009	7/26/2010	8/31/2011	
8/19/2009	7/26/2010	8/31/2011	
8/19/2009	7/26/2010	8/31/2011	
8/19/2009	7/27/2010	8/31/2011	
8/19/2009	7/27/2010	9/1/2011	
8/20/2009	7/27/2010	9/1/2011	
8/20/2009	7/27/2010	9/2/2011	
8/20/2009	7/28/2010	9/6/2011	
8/21/2009	7/28/2010	9/6/2011	
8/21/2009	7/28/2010	9/6/2011	
8/21/2009	7/28/2010	9/6/2011	
8/21/2009	7/28/2010	9/8/2011	
8/24/2009	7/29/2010	9/9/2011	
8/25/2009	7/29/2010	9/9/2011	
8/26/2009	7/29/2010	9/9/2011	
8/27/2009	7/29/2010	9/9/2011	
8/27/2009	7/30/2010	9/12/2011	
8/27/2009	7/30/2010	9/12/2011	

Attachement A—Fiduciaries Removed (post hearing question #2)—
Continued

FY 2009 DATE OF REMOVAL	FY 2010 DATE OF REMOVAL	FY 2011 DATE OF REMOVAL	FY 2012 (through 2/28/12) DATE OF REMOVAL
8/27/2009	7/30/2010	9/13/2011	
8/27/2009	7/30/2010	9/13/2011	
8/28/2009	7/30/2010	9/13/2011	
8/28/2009	8/2/2010	9/13/2011	
8/28/2009	8/3/2010	9/13/2011	
8/28/2009	8/3/2010	9/14/2011	
8/31/2009	8/4/2010	9/14/2011	
8/31/2009	8/5/2010	9/15/2011	
8/31/2009	8/5/2010	9/20/2011	
8/31/2009	8/8/2010	9/21/2011	
8/31/2009	8/10/2010	9/21/2011	
9/1/2009	8/10/2010	9/22/2011	
9/1/2009	8/10/2010	9/22/2011	
9/1/2009	8/11/2010	9/23/2011	
9/1/2009	8/11/2010	9/23/2011	
9/1/2009	8/12/2010	9/26/2011	
9/1/2009	8/12/2010	9/26/2011	
9/2/2009	8/12/2010	9/27/2011	
9/2/2009	8/12/2010	9/27/2011	
9/2/2009	8/13/2010	9/27/2011	
9/3/2009	8/13/2010	9/29/2011	
9/3/2009	8/13/2010	9/29/2011	
9/3/2009	8/13/2010	9/30/2011	
9/4/2009	8/13/2010	9/30/2011	
9/4/2009	8/13/2010	9/30/2011	
9/4/2009	8/16/2010	9/30/2011	
9/4/2009	8/17/2010		
9/4/2009	8/17/2010		
9/4/2009	8/17/2010		
9/8/2009	8/17/2010		
9/8/2009	8/17/2010		

Attachement A—Fiduciaries Removed (post hearing question #2)—
Continued

FY 2009 DATE OF REMOVAL	FY 2010 DATE OF REMOVAL	FY 2011 DATE OF REMOVAL	FY 2012 (through 2/28/12) DATE OF REMOVAL
9/9/2009	8/17/2010		
9/9/2009	8/18/2010		
9/9/2009	8/18/2010		
9/9/2009	8/18/2010		
9/10/2009	8/19/2010		
9/10/2009	8/20/2010		
9/10/2009	8/20/2010		
9/10/2009	8/20/2010		
9/11/2009	8/23/2010		
9/11/2009	8/23/2010		
9/11/2009	8/23/2010		
9/11/2009	8/23/2010		
9/11/2009	8/23/2010		
9/12/2009	8/23/2010		
9/14/2009	8/23/2010		
9/14/2009	8/23/2010		
9/14/2009	8/25/2010		
9/15/2009	8/25/2010		
9/15/2009	8/25/2010		
9/15/2009	8/26/2010		
9/16/2009	8/26/2010		
9/16/2009	8/26/2010		
9/16/2009	8/27/2010		
9/17/2009	8/28/2010		
9/17/2009	8/30/2010		
9/17/2009	8/30/2010		
9/18/2009	8/30/2010		
9/18/2009	8/31/2010		
9/21/2009	8/31/2010		
9/21/2009	9/1/2010		
9/21/2009	9/1/2010		

Attachement A—Fiduciaries Removed (post hearing question #2)—
Continued

FY 2009 DATE OF REMOVAL	FY 2010 DATE OF REMOVAL	FY 2011 DATE OF REMOVAL	FY 2012 (through 2/28/12) DATE OF REMOVAL
9/21/2009	9/1/2010		
9/22/2009	9/2/2010		
9/23/2009	9/3/2010		
9/23/2009	9/3/2010		
9/23/2009	9/3/2010		
9/23/2009	9/7/2010		
9/24/2009	9/7/2010		
9/24/2009	9/8/2010		
9/25/2009	9/9/2010		
9/25/2009	9/9/2010		
9/25/2009	9/10/2010		
9/25/2009	9/10/2010		
9/25/2009	9/10/2010		
9/25/2009	9/13/2010		
9/28/2009	9/13/2010		
9/28/2009	9/14/2010		
9/28/2009	9/14/2010		
9/28/2009	9/16/2010		
9/29/2009	9/16/2010		
9/29/2009	9/16/2010		
9/30/2009	9/17/2010		
9/30/2009	9/17/2010		
9/30/2009	9/17/2010		
9/30/2009	9/20/2010		
	9/20/2010		
	9/21/2010		
	9/21/2010		
	9/21/2010		
	9/22/2010		
	9/22/2010		
	9/23/2010		

Attachement A—Fiduciaries Removed (post hearing question #2)—
Continued

FY 2009 DATE OF REMOVAL	FY 2010 DATE OF REMOVAL	FY 2011 DATE OF REMOVAL	FY 2012 (through 2/28/12) DATE OF REMOVAL
	9/23/2010		
	9/23/2010		
	9/24/2010		
	9/24/2010		
	9/24/2010		
	9/27/2010		
	9/29/2010		
	9/29/2010		
	9/29/2010		
	9/30/2010		
	9/30/2010		

Question 3: Has VA ever overruled a Veteran who wanted his/her state-appointed guardian appointed as his/her fiduciary and appointed someone else?

a. If so, please provide all occurrences over the last five years.

Response: VA records do not contain information on the appointment of Federal fiduciaries for beneficiaries who also have state court-appointed guardians. However, VA's policy is to select the most effective and least restrictive method of payment. The least restrictive method of payment refers to the selection of a third-party payee, such as a relative or close friend who can serve without the supervision of a court. Since a court-appointed guardian is the most restrictive method of payment and often requires the beneficiary to incur fees that exceed by far the four percent maximum established by Congress for Federal fiduciaries, VA does not always recognize the court-appointed guardian. When a beneficiary requests his or her court-appointed guardian as fiduciary, VA will still attempt to qualify that individual because this is the individual the Veteran desires. There are cases in which VA cannot qualify the court-appointed guardian, such as cases where the guardian was previously removed as Federal fiduciary for misusing benefits.

Question 4: What is the clinical process for determining incompetency?

Response: For purposes of VA's fiduciary appointments, a beneficiary is determined to be "incompetent" when a healthcare professional has opined that the beneficiary cannot manage his or her financial affairs, specifically his or her VA benefits. VA's administrative process by which it determines incompetency is predicated on a clinician's medical judgment. VA adjudicators will not make an incompetency determination without medical evidence indicating that the beneficiary cannot manage his or her financial affairs.

Upon receipt of medical evidence indicating an inability to manage financial affairs, VA will propose an incompetency rating and provide notice to the beneficiary regarding his or her due process rights. The beneficiary has 60 days to dispute the proposal and provide information or evidence indicating that the proposal is incorrect.

At the conclusion of the 60-day period, or upon waiver of that period, VA will consider any information or evidence submitted by the beneficiary and prepare a final rating on the issue of incompetency. VA will issue any final rating of incompetency with notice regarding the beneficiary's right of appeal to the Board of Veterans' Appeals. The rating is then referred to the VA fiduciary hub with jurisdiction to initiate the fiduciary appointment process. A field examiner will personally interview the beneficiary, his or her family members, and other parties of interest to determine the person or entity best suited to serve as fiduciary for the beneficiary. The field examiner will recommend a fiduciary selection to fiduciary program management for approval.

Question 5: What are the challenges of bringing VA-appointed fiduciaries into accordance with the law of the state in which the fiduciary is practicing?

a. Does VA plan to incorporate this practice into its fiduciary program?

Response: VA interprets current Federal law to mean that Congress chose to legislate in this area because it recognized the need for enactment of a consistent national standard for all VA beneficiaries who cannot manage their benefits, regardless of the state in which the beneficiary or fiduciary resides. Absent such a standard, which preempts state law, beneficiaries might receive different services, incur different fees, and have different rights and obligations, based only upon the beneficiary's or fiduciary's state of residence. VA generally does not support the disparate treatment of beneficiaries. Further, it would be very difficult for VA to conduct the oversight required by current law under a system requiring the application of various standards of conduct for fiduciaries.

VA does not intend to require the application of state law in its fiduciary program. However, consistent with Congressional intent, VA is working to revise its regulations to ensure a national standard is in place for the fiduciaries who serve Veterans and other beneficiaries. This project includes a review of other Federal agencies' regulations, as well as the provisions of the Uniformed Veterans Guardianship Act, the Uniform Probate Code, and the standards of conduct issued by professional organizations and industry practice groups. VA intends to propose the incorporation of some of these provisions in its revised regulations, as a means to ensure consistent fiduciary services nationwide.

Question 6: Has VA put out a decision assessment for Freeman vs. Shinseki?

a. If so, please provide a copy of the assessment and the date it was issued.

b. If not, please explain why a decision assessment has not been distributed.

Response: A decision assessment document (DAD) regarding a court's opinion is for informational purposes only. It does not establish VA policy or provide procedural guidance for field personnel. VA did not issue a DAD regarding Freeman v. Shinseki. Instead, the Pension and Fiduciary Service issued Fast Letter 11-37, Procedures and Required Documentation for Fiduciary Selection Decisions, Notices of Disagreement Received Regarding Fiduciary Selection, and Fiduciary Notice of Disagreement Tracking Requirements, regarding Freeman. This Fast Letter was issued on December 6, 2011, and provides detailed instructions on VA's interpretation of the decision, notification procedures, and appeal processing procedures. A copy is included as **Attachment B**.

Attachment B

DEPARTMENT OF VETERANS AFFAIRS

Veterans Benefits Administration

Washington, D.C. 20420

December 6, 2011

Director (00/21PF)
All VA Regional Offices

In Reply Refer To: 21PF
Fast Letter: 11-37

SUBJ: Procedures and Required Documentation for Fiduciary Selection Decisions, Notices of Disagreement Received Regarding Fiduciary Selection, and Fiduciary Notice of Disagreement Tracking Requirements

Purpose

This fast letter provides correspondence to be used when notifying a Veteran or other beneficiary (beneficiary) of Department of Veterans Affairs' (VA) selection of a fiduciary to manage his or her VA funds. It also includes letters to be used in the event a beneficiary files a Notice of Disagreement (NOD) regarding a fiduciary selection.

Background

The purpose of the VA Fiduciary Program is to protect the benefits paid to beneficiaries who are unable to manage their financial affairs. This protection most often includes the appointment or recognition of a fiduciary to manage the beneficiary's VA estate. On April 26, 2011, the Court of Appeals for Veterans Claims (CAVC) decided Freeman v. Shinseki, holding that VA's selection of a fiduciary is subject to appeal by the beneficiary to the Board of Veterans' Appeals and thereafter to the CAVC.

Procedures for Notifying a Beneficiary of Fiduciary Selection

Effective April 26, 2011, beneficiaries and their representatives, if any, must be notified in writing of our selection of a fiduciary to manage the beneficiary's VA benefits. This requirement pertains to all beneficiaries who are rated incompetent, including those paid by Supervised Direct Pay. The Fiduciary Activity making the selection is responsible for providing this notification within five working days of the selection. Notifications must be provided for all initial selections and successor selections made on or after April 26, 2011. All notification letters for selections made on or after April 26, 2011, but prior to the date of this fast letter must be mailed within 60 days of the date of this fast letter.

To facilitate compliance with the CAVC's decision, the letter attached as Enclosure A must be used in every instance of selection of a fiduciary. The letter must be amended to include the information specific to each case as noted in red text. No other alterations may be made.

Every beneficiary and his or her representative, if any, must be sent the fiduciary's contact information and a copy of the fund usage agreement. These are required elements of the letter.

Procedures for Notification Upon Receipt of a Notice of Disagreement

Consistent with current practice, only the beneficiary has standing to appeal our selection of a fiduciary. However, certain persons or entities other than the beneficiary may file a NOD on the beneficiary's behalf. Persons granted legal authority to act on a beneficiary's behalf, such as a court-appointed guardian, conservator, committee, or trustee, may appeal the selection of a fiduciary on the beneficiary's behalf. Also, if a beneficiary chooses to appeal the selection of a fiduciary, an accredited service organization representative, agent, or attorney representing the beneficiary as indicated by VA Form 21-22, Appointment of Veterans Service Organization as Claimant's Representative, or VA Form 21-22a, Appointment of Individual as Claimant's Representative, may appeal the selection of a fiduciary on the beneficiary's behalf.

Receipt and control of NODs pertaining to the selection of a fiduciary will be the responsibility of the Regional Office of Jurisdiction (ROJ) where the Fiduciary Activity has selected the fiduciary. The Veterans Service Center Manager or Hub Manager at the ROJ will modify and use one of two sample letters (Enclosure B or Enclosure C) attached to this fast letter to provide notification to the beneficiary of receipt and/or acceptance of the NOD.

The three categories of acceptable NODs submitted by the beneficiary or legal representative that warrant sending one of the enclosed letters are:

1. Selections made prior to April 26, 2011
—Process as any other NOD if received within one year of the date of selection. (Use Enclosure B.)
2. Selections made on or after April 26, 2011
—Process as any other NOD if received within one year of the date of the notification letter. (Use Enclosure B.)
3. Selections for which notification was provided more than one year prior to receipt of NOD
—Send acknowledgement letter and hold awaiting further guidance. (Use

Enclosure C.)

For NODs in categories one and two, the attached letter, Enclosure B, must be used to notify the beneficiary of our receipt of the NOD. Those NODs received which fall into category three will require sending the letter labeled Enclosure C. Guidance regarding preparation of a statement of the case will be provided under separate cover.

NODs received from an individual or entity other than the beneficiary or his or her accredited or court appointed representative will not be accepted. In such cases, the person or entity submitting the correspondence will be provided the letter labeled Enclosure D. This letter acknowledges receipt, but states VA is not able to accept the document as an NOD as it was not submitted by the beneficiary or his or her legal representative.

Procedures for Tracking Receipt of a Notice of Disagreement

Stations are required to compile a list of all NODs received regarding fiduciary cases on the enclosed NOD Tracker, Enclosure E. There is no current requirement to provide this listing on a recurring basis; however, the information must be made available upon request of Pension and Fiduciary Service and will be reviewed during site surveys.

Manual Changes

Pension and Fiduciary Service will update M21-1MR as needed consistent with this fast letter.

Questions

Questions regarding this letter may be submitted to VAVBAWAS/CO/F&FE.

/S/

David R. McLenachen
Director
Pension and Fiduciary Service

Enclosures

Question 7: In its submitted testimony, VA refers to the April 2011 Freeman vs. Shinseki opinion as something that “may significantly impact VA’s fiduciary program workload.” Please inform the Committee at what date VA will know whether there will be an impact and what the impact will be.

Response: The impact of the Freeman decision is difficult to predict. VA mailed more than 23,000 letters to VA beneficiaries advising them of their appellate rights regarding the selection of a fiduciary. Beneficiaries have one year from the date of the letter to submit a Notice of Disagreement regarding a fiduciary appointment. Historically, approximately five percent of VA’s benefit decisions are appealed. If this holds true for appeals in the fiduciary program, VA could receive as many as 1,200 appeals as a result of the initial notifications. Applying the same logic, VA could receive approximately 1,500 appeals annually in response to the approximately 30,000 new appointments made annually.

While VA will need time to see the impact Freeman has on the fiduciary program, VA’s appointment procedures might significantly reduce the number of appeals received as a result of Freeman. As stated above, VA considers the beneficiary’s preference first and generally appoints family members, care takers, or legal guardians. VA anticipates that most beneficiaries will be satisfied with their fiduciaries. Also, as described above, these beneficiaries have already had one opportunity to appeal VA’s decision regarding their inability to manage their VA benefits. This prior right of appeal might further mitigate the risk of large numbers of appeals.

Question 8: In its submitted testimony, VA cited a “misuse rate of less than one-tenth of one percent in fiscal year 2011” of benefits by fiduciaries. Please list all the metrics used to calculate this rate, in addition to how misuse was discovered, including whether it was reported or discovered by VA.

Response: VA measured the misuse rate using the number of misuse cases as compared the number of beneficiaries in the fiduciary program. The data used for FY 2011 is:

Number beneficiaries in the fiduciary program = 122,271
Number of misuse cases = 113
Misuse rate = 0.09 percent

There are several ways VA is alerted to potential misuse of VA funds by a fiduciary. The most common methods include annual accountings, field examinations, and beneficiary and third party reports. Auditing of annual accountings can reveal irregularities in expenditures, which VA will investigate for potential misuse. Additionally, failure to provide adequate accountings has also alerted VA of potential misuse. Field examinations provide information of inappropriate expenditures or other potential misuse through personal contact with the beneficiary and fiduciary. Additionally, a report from the beneficiary or third party has also prompted VA to investigate allegations of misuse.

Question 9: What are VA’s own proposals for reforming the fiduciary system? Please provide a detailed response including any potential statutory reforms and a timeline for completing and implementing the reforms.

Response: VA has several initiatives underway to improve service to beneficiaries in the fiduciary program. In 2011, VA began transforming the culture of the fiduciary program to reflect a more beneficiary-centric service approach. This cultural transformation began with a revised mission statement that focuses on this approach. This cultural transformation was communicated through training conferences, monthly teleconferences, and policy changes to ensure the focus of the fiduciary program is meeting the beneficiary’s needs and wants. Under this change in culture, fiduciaries will have the responsibility and authority to determine the expenditures that are in the best interests of the beneficiary.

As noted in the testimony, VA will revise its fiduciary regulations. Among other things, these regulations will prescribe beneficiary rights, fiduciary responsibilities,

bars to service, limitations on commissions, grounds for removal, investigation procedures, and fiduciary qualifications. VA interprets its regulations and establishes procedures for its field personnel in its Adjudication Procedures Manual. VA will update the fiduciary portion of the manual consistent with the revised regulations.

VA is currently evaluating the replacement of the Fiduciary-Beneficiary System (FBS), which is the information technology system used by VA's fiduciary personnel. Replacement of FBS will improve the timeliness of VA's field fiduciary functions, better utilize resources, and protect beneficiaries through enhanced national oversight capabilities. Improved caseload management will enhance the efficiency of field examiners and allow managers to better assess workload trends.

VA is consolidating its fiduciary activities to six regional hubs. This consolidation will allow VA the flexibility to address workload issues without the current constraint of state borders and VA regional office jurisdictions. It will also facilitate consistency in operations and decision-making, which will improve the quality of services provided to beneficiaries and the oversight of fiduciaries. The consolidation will be complete on March 26, 2012.

VA developed and piloted centralized training for new legal instruments examiners (LIEs) in 2011. VA will continue to refine the centralized training for both LIEs and field examiners, and plans to fully deploy the concept in 2013. Training for fiduciaries, including an online training module and enhanced website, is also a reform initiative. Funding for this initiative is included in the FY 2013 budget request.

VA is also considering several policy changes that will enhance its fiduciary program. Policy changes under consideration include clarifying the limitation on fiduciary commissions, enhancing the communication between the fiduciary and beneficiary by requiring sharing of the approved annual accounting, and establishing case managers to address the unique needs of our very seriously injured Veterans in the fiduciary program.

Additional Question & Response From: Hon. Bill Johnson, Chairman, Subcommittee on Oversight and Investigations - To: U.S. Department of Veterans Affairs

Question 1: Please notify us if VA uses metrics to monitor the Fiduciary Program. If VA does not use metrics, please provide an explanation as to why. If VA does use metrics, please provide all of the metrics that Mr. McLenachen reviews, including numbers, scores, and any other measure VA uses to monitor the effectiveness and efficiency of the Fiduciary Program. Additionally, please provide what VA considers a good score using the STAR protocol.

Response: VA has several metrics for the performance of the fiduciary program. The following table lists current goals and results effective February 29, 2012. It also compares national performance with the performance of the Western Area Fiduciary Hub to illustrate the improvements made based upon consolidation of VA's fiduciary activities.

National Fiduciary Program Metrics

	Goal	National	Western Area Hub
Fiduciary STAR Accuracy	92%	89%	88%
Follow-up field exams pending <= 120 days	90%	63%	78%
Initial appointments pending <=45 days	90%	59%	97%
% accountings reviewed within 14 Days	94%	90%	98%
% accountings not seriously delinquent	95%	94%	95%

Question 2: How does VA intend to disseminate the change of the form to its people at the local level?

Response: Revised VA Form 21-4703, *Fiduciary Agreement*, is currently available for use by field examiners on VBA's intranet site. The Pension and Fiduciary Service provided guidance to field personnel regarding use of the form during its March 14, 2012, monthly national fiduciary teleconference.

QUESTION: By close of business on March 9th, VA's must provide its opinion on removing the third paragraph on "Approval for use of VA Funds" from VA Form 21-4703.

Response: The paragraph in question is in the "Information for Fiduciary" material at the end of the form and concerns VA approval for use of beneficiary funds. As noted during the hearing, it is current VA policy that VA-appointed fiduciaries have a fiduciary relationship with the beneficiaries they serve, subject only to VA oversight. It is generally the fiduciary's obligation to determine which expenditures are in the best interest of the beneficiary. The informational paragraph, which informs fiduciaries that VA "must approve any use of a beneficiary's VA funds," is not consistent with this policy and will be removed. We have revised the form and started the clearance process. We hope to have it available for use by VA's fiduciary personnel within 60 days.

QUESTION: By close of business on March 9th, VA must provide its written opinion on what and how they can incorporate aspects of other federal fiduciary programs, including Social Security's program, to make VA's program better.

Response: In January 2011, VA initiated a multi-agency fiduciary roundtable with the Office of Personnel Management, Social Security Administration, the Defense Finance and Accounting Service, and the Department of Defense. The objectives of the roundtable were to identify best practices, improve communication between the agencies, and to explore data sharing. The roundtable discussions revealed that there are some differences in the law governing each agency's program. Further, each agency, which serves a different population of beneficiaries, has interpreted its authority differently.

We interpret the law governing VA's fiduciary program to mean that Congress intended significant oversight for the Nation's most vulnerable Veterans, who are unable to manage their financial affairs. While VA's program improvements must be within the scope of its statutory authority and cannot include broad adoption of other agencies' regulations, guidance documents, and procedures, the material has been informative for purposes of our revision of VA's fiduciary regulations. Our draft notice of proposed rulemaking, which will address every aspect of VA's fiduciary program, will be based, in part, upon other agencies' regulations.

QUESTION: By close of business on March 9th, provide the operational metrics reviewed by Director and operations teams that will address the problems noted in the hearing. Highlight in a manner so that we can act on them to resolve them.

Response: Regarding internal quality measures, the Pension and Fiduciary Service has a dedicated quality assurance staff responsible for checking the performance of VA's field fiduciary activities using the Systematic Technical Accuracy Review protocol. This is the same quality assurance protocol that VA uses for its compensation and pension programs. VA measures individual fiduciary performance through its oversight activities, with the basic inquiry being whether the fiduciary is fulfilling his or her obligations to the beneficiary. These activities include follow-up field examinations, review of annual accountings, on-site reviews of fiduciaries who serve more than 20 beneficiaries, misuse investigations, and beneficiary calls to field personnel regarding fiduciary performance.

Letter & Questions From: Hon. Joe Donnelly, Subcommittee on Oversight and Investigations - To: Mr. David R. McLenachen, Director, Pension and Fiduciary Service, Veterans Benefits Administration, Department of Veterans Affairs

FEBRUARY 15, 2012

Mr. David R. McLenachen
Director, Pension and Fiduciary Service
Veterans Benefits Administration
Department of Veterans Affairs
810 Vermont Ave, NW
Washington, DC 20420

Dear Mr. McLenachen:

I would like to request your response to the enclosed questions for the record I am submitting in reference to our House Committee on Veterans' Affairs Subcommittee on Oversight and Investigations hearing on *Reforming VA's Flawed Fiduciary System* on February 9, 2012. Please answer the enclosed hearing questions by no later than March 30, 2012.

In an effort to reduce printing costs, the Committee on Veterans' Affairs, in cooperation with the Joint Committee on Printing, is implementing some formatting changes for material for all full committee and subcommittee hearings. Therefore, it would be appreciated if you could provide your answers consecutively on letter size paper, single-spaced. In addition, please restate the question in its entirety before the answer.

Due to the delay in receiving mail, please provide your response to Ms. Orfa Torres at orfa.torres-jaen@mail.house.gov, and fax at (202) 225-2034. If you have any questions, please call (202) 225-9756.

Sincerely,
Joe Donnelly
Ranking Member

DMT/ot

Questions

1. During the hearing you stated that fiduciaries are required to undergo a background investigation. Can you provide the Subcommittee with a detailed explanation of what a background investigation entails, including what records are sought and reviewed and what personal interviews, if any, are undertaken?

a. What type of fiduciary (for example, paid fiduciary, court-appointed fiduciary, VA appointed fiduciary) would require a background investigation?

b. Has the VA ever waived a background investigation to first-time fiduciaries?

i. If so, is there a consistent policy on waivers?

ii. Does the VA waive background investigations to recurring fiduciaries?

iii. Under what circumstances would the VA allow a background investigation to be waived?

2. Please provide the Subcommittee with detailed information on how the Hub Pilot Program will be managed.

a. How will fiduciary manager track field examiners while they travel?

b. Is there a budget set aside to cover the cost of travel for field examiners?

c. When would a field examiner be required to travel?

d. How often would a field examiner travel?

e. In your written testimony you mentioned the VA conducted an analysis of the Hub program to determine the programs' weaknesses and strengths. Please provide us a list of the weaknesses and strengths you found.

3. Your testimony stated that you had begun a "complete review and revision of all regulations and procedure manuals pertaining to fiduciary matters." During the hearing you estimated that this process would take one to one-and-a-half years to complete.

a. Please provide the Subcommittee with your best estimate as to the date you plan to publish regulations for notice and comment?

b. Please provide the Subcommittee with a detailed timeline listing the subjects of your review and estimated timeline for completion of each item.

4. Regarding the Fiduciary Beneficiary System (FBS):

a. Please provide the Subcommittee with a detailed timeline regarding replacement of this system.

b. Will the replacement system be integrated with the Veterans Benefits Management System (VBMS)?

c. Is VA assigning or requiring a unique identifier for all fiduciaries? If not, does the VA plan to do so?

5. Regarding VA form 21-4703:

a. If the VA approval of expenditures language is removed from the Fiduciary Agreement, what safeguards would be in place to protect beneficiaries? What safeguards would the VA recommend?

b. If the agency relationship between the VA and the fiduciary was removed, would current law protect the interests of the beneficiary? If current law is felt by the VA to be inadequate, what statutory provisions would the VA recommend to protect beneficiaries?

Response From: Mr. David R. McLenachen, Director, Pension and Fiduciary Service, Veterans Benefits Administration, Department of Veterans Affairs - To: Hon. Joe Donnelly, Subcommittee on Oversight and Investigations

Question 1: During the hearing you stated that fiduciaries are required to undergo a background investigation. Can you provide the Subcommittee with a detailed explanation of what a background investigation entails, including what records are sought and reviewed and what personal interview, if any, are undertaken?

Response: Section 5507 of title 38, United States Code, requires VA to appoint fiduciaries based upon a fitness investigation, to include face-to-face interviews, credit report reviews, and a criminal history check; a determination regarding the interests of the beneficiary; and the ability to obtain a bond. The process is thorough and is outlined below.

All proposed fiduciaries are contacted in person to assess their willingness to serve, interest in the beneficiary, and qualifications. Qualifications include an analysis of a current credit report, review of an instant criminal background investigation, and consideration of opinion of at least one character witness.

VA maintains contracts with reporting services to obtain the required background information. With this information, VA's field examiners are able to assess a proposed fiduciary's prior criminal activities, bankruptcy and foreclosure information, addresses, relationships, and personal assets. The assessment includes consideration of the nature of an offense, the length of time since an offense occurred, evidence that the proposed fiduciary has been rehabilitated, and all information contained in the credit report. A recommendation regarding the proposed fiduciary is not made until all of the available evidence is weighed and the individual is determined to be acceptable for service.

a. What type of fiduciary (for example, paid fiduciary, court-appointed fiduciary, VA appointed fiduciary) would require a background investigation?

Response: Background investigations, consisting of obtaining and reviewing a credit report, and conducting an instant criminal background check, are generally required for all individuals who wish to serve as a VA beneficiary's fiduciary.

For credit reports, the exceptions are: (1) the parent of a minor beneficiary, (2) the spouse of a Veteran, (3) a court-appointed fiduciary, (4) an individual appointed to manage an estate where the annual amount of benefits will not exceed \$4,338, which reflects statutory requirement and is adjusted annually and (5) an individual currently serving satisfactorily as a VA fiduciary.

For instant criminal background checks, the exceptions are: (1) cases in which VA makes an immediate benefit payment to the parent of a minor beneficiary, and (2) financial institutions or companies that provide fiduciary services.

b. Has the VA ever waived a background investigation to first-time fiduciaries?

Response: Yes, but only as outlined in the above exceptions.

i. If so, is there a consistent policy on waivers?

Response: The policy regarding waivers is established by 38 U.S.C. § 5507(c), 38 C.F.R. 3.850, and VBA's Adjudication Procedures Manual, the guidance VA provides to its field personnel to interpret its regulations and establish procedures.

ii. Does the VA waive background investigations to recurring fiduciaries?

Response: Credit reports are waived for fiduciaries currently serving satisfactorily. Instant criminal background checks are performed on all proposed fiduciaries who are individuals regardless of the number of beneficiaries served. Background checks are not performed on companies that provide fiduciary services.

iii. Under what circumstances would the VA allow a background investigation to be waived?

Response: As noted above, the exceptions for instant criminal background checks are: (1) cases in which VA makes an immediate benefit payment to the parent of a minor beneficiary, and (2) financial institutions or companies that provide fiduciary services.

Question 2: Please provide the Subcommittee with detailed information on how the Hub Pilot Program will be managed.

a. How will the Fiduciary Manager track field examiners while they travel?

Response: In 2009, VBA initiated a pilot project, which consolidated 14 of its fiduciary activities into the Western Area Fiduciary Hub, operating in a nearly paperless environment. Consolidation had a significant positive impact on the timeliness and quality of fiduciary appointments. Based upon the pilot results, VBA deployed the Hub concept nationwide at five new Hubs located at the Columbia, Indianapolis, Lincoln, Louisville, and Milwaukee Regional Offices. VBA's fiduciary activities will be fully consolidated in 2012.

Fiduciary Hub Management works with field examiners to schedule field examination visits according to the most urgent needs and to maximize the efficiency of their travel. The Western Area Fiduciary Hub (WAH) has been using MapPoint software with good success to help identify ways to recognize the priorities, cluster work, and take the most efficient routes when traveling. The new Hubs are incorporating best practices from WAH. Hub Management also checks mileage monthly to ensure the amount of travel is consistent with the number of field examinations completed and the amount of travel needed to complete those field examinations.

b. Is there a budget set aside to cover the cost of travel for field examiners?

Response: For fiscal year 2012, a budget has been established for the Fiduciary Hubs to cover the expenses of not only travel for field examiners, but also centralized training for new Hub employees, supervisory oversight travel to each state managed within a Hub, and GSA car leases.

c. When would a field examiner be required to travel?

Response: Please see the response to question 2d below.

d. How often would a field examiner travel?

Response: Field examiners travel daily to visit beneficiaries and fiduciaries. Most travel is accomplished during a normal work tour with use of a GSA car. Additional travel money is spent when a field examiner must travel for an extended time. Overnight trips are needed periodically when multiple cases are located in remote areas where it is not feasible to travel both ways and accomplish needed work during a normal eight-hour shift. To minimize travel costs, VBA is hiring additional field examiners placed strategically throughout the country where field examiner coverage is sparse (i.e. rural areas). This will facilitate more efficient service and less travel for field examiners.

e. In your written testimony you mentioned the VA conducted an analysis of the Hub program to determine the programs' weaknesses and strengths. Please provide us a list of the weaknesses and strengths you found.

Response: The WAH pilot in Salt Lake City, Utah, afforded VA the opportunity to identify best practices as well as identify challenges and weaknesses. One of the largest challenges discovered by WAH during consolidation was the implementation of paperless processing. Ensuring that all documentation pertaining to a Veteran's fiduciary activity was scanned into VBA's online depository (Virtual VA) posed a challenge based in both consistency of operations and the volume of paper. Scanning units have been established at all of the Hubs to scan incoming mail, and a contractor is being utilized to scan all historical documentation into the Virtual VA system. VBA has also developed standard operating procedures for paperless processing in an effort to gain consistency of services. Working in the paperless environment has allowed the WAH to manage work more efficiently, transfer workload among employees with more ease, and increase timeliness in processing.

Additional lessons learned during the pilot include:

- Ensuring out-based fiduciary employees have adequate and appropriate IT equipment,
- Establishing a toll-free number exclusive to the Hubs to provide specialized customer service to fiduciaries,
- Developing a refresher training curriculum to maintain and improve the level of performance of all Hub personnel,
- Utilizing Regional Counsels for new employee and refresher training on the various state laws and processes for Hub employees, and
- Utilizing a mapping system for workload with distance, clustering, and routing data for efficient assignment of field examinations.

Question 3: Your testimony stated that you had begun a "complete review and revision of all regulations and procedure manuals pertaining to fiduciary matters." During the hearing you estimated that this process would take one to one-and-a-half years to complete.

a. Please provide the Subcommittee with your best estimate as to the date you plan to publish regulations for notice and comment?

Response: We are currently drafting the notice of proposed rulemaking and hope to have it under review within the Department within 60 days. Additional steps required include an internal review process and Office of Management and Budget review.

In the interim, Pension and Fiduciary Service will implement program improvements that do not require rulemaking using VBA's "fast letter" process, under which the agency provides mandatory policy guidance to its field personnel. For example, on March 16, 2012, the Service issued Fast Letter 12-09 regarding procedures for providing copies of fiduciaries' annual accountings to beneficiaries. These procedures add transparency for beneficiaries and enhance VA's ability to detect misuse of benefits. On March 16, the Service also issued Fast Letter 12-10, which clarified VA's interpretation of current law and procedures for appointing paid fiduciaries.

b. Please provide the Subcommittee with a detailed timeline listing the subjects of your review and estimated timeline for completion of each item.

Response: We foresee the complete review and revision of all regulations and procedure manuals pertaining to fiduciary matters in approximately 18 months. We will propose a complete revision of 38 C.F.R. part 13 consistent with current VA policy and procedures. Among other things, we will address:

- Beneficiary rights;
- Bars to serving as a fiduciary;
- Qualification of fiduciaries;
- Responsibilities of fiduciaries;
- Fiduciary commissions;
- Removal of fiduciaries;
- Preference in selection of fiduciaries;
- Field examinations;
- Periodic onsite reviews;
- Personal funds of patients; and
- Misuse, reissuance, and recoupment of benefits.

After the proposed rule has been published for notice and comment, we will revise the Adjudication Procedures Manual to ensure its consistency.

Question 4: Regarding the Fiduciary Beneficiary System (FBS)

a. Please provide the Subcommittee with a detailed timeline regarding replacement of this system.

Response: Pension and Fiduciary Service is working with the Office of Enterprise Development (OED) in the Office of Information and Technology to replace the current FBS system. The new system will include rules-based functionality, communicate with other VA systems, and facilitate the processing of accountings and field examination reports. OED has outlined the following three steps necessary to update the current system:

1. Clean-up the data contained in FBS so that it is compatible with VBA's corporate database, which contains all beneficiary records;
2. Migrate FBS data to the corporate database and modify FBS to allow users to view information in the corporate database; and
3. Build a new user-friendly, rules-based, front-end system, which will provide all of the functionality required to properly administer the fiduciary program.

We are currently in step 1, and anticipate completion in the Fall of 2012. At that time, we will be able to provide a better estimate for the complete replacement of FBS.

b. Will the replacement system be integrated with the Veterans Benefit Management System (VBMS)?

Response: Yes, initial integration will be with the corporate database but the plan for the future is complete integration with VBA's systems.

c. Is VA assigning or requiring a unique identifier for all fiduciaries? If not, does the VA plan to do so?

Response: Yes, VA requires all businesses acting as fiduciaries to provide their tax-identification number. VA requires all individuals who are fiduciaries to provide their Social Security number. VA will not appoint the business or individual without this information.

Question 5: Regarding VA Form 21–4703:

a. If the VA approval of expenditures language is removed from the Fiduciary Agreement, what safeguards would be in place to protect beneficiaries? What safeguards would the VA recommend?

Response: If the approval of expenditures language is removed from the Fiduciary Agreement, there are adequate safeguards in place to protect beneficiaries. These safeguards include, but are not limited to: annual accountings, surety bonds, withdrawal agreements, follow-up field examinations, misuse investigations, and onsite reviews. VA will also continue to collect beneficiaries' income and expense information during field examinations for purposes of oversight and to provide to fiduciaries for their use in determining the beneficiary's needs.

b. If the agency relationship between the VA and the fiduciary was removed, would current law protect the interests of the beneficiary? If current law is felt by the VA to be inadequate, what statutory provisions would the VA recommend to protect beneficiaries?

Response: VA interprets this question as being related to the prior question regarding VA's role in the fiduciary program. In our view, current law, as interpreted and implemented by VA, provides adequate protection for beneficiaries. It is current VA policy that VA appointed fiduciaries have a fiduciary relationship with the beneficiary and an obligation to determine which expenditures are in the beneficiary's best interest. It is VA's obligation to properly appoint fiduciaries and conduct oversight of fiduciaries to ensure that they are properly managing beneficiary funds and meeting the needs of the beneficiaries they serve. As noted above, this oversight includes follow-up field examinations, annual accountings, surety bonds, withdrawal agreements, misuse investigations, and onsite reviews. VA will continue to evaluate current law to determine whether legislative proposals might facilitate program improvements.